**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**

| | |
|---|---|
| **In the Matter of**<br><br>**MCI COMMUNICATIONS SERVICES, INC.,**<br><br>***Complainant*,**<br><br>**v.**<br><br>**WIDE VOICE, LLC,**<br><br>***Defendant.*** | **Proceeding Number 19-121**<br>**Bureau ID Number**<br>**EB-19-MD-003** |

# FORMAL COMPLAINT OF MCI COMMUNICATIONS SERVICES, INC.


Scott H. Angstreich
Joshua Hafenbrack
Sean Nadel
KELLOGG, HANSEN, TODD, FIGEL & FREDERICK, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Curtis L. Groves
VERIZON
1300 I Street, N.W., Suite 500 East
Washington, D.C. 20005
(202) 515-2179

*Counsel for MCI Communications Services, Inc.*


June 14, 2019

June 14, 2019

**Via ECFS**

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

**Re: *MCI Communications Services, Inc. v. Wide Voice, LLC*, Proceeding No. 19-121, Bureau ID No. EB-19-MD-003**

Dear Ms. Dortch:

MCI Communications Services, Inc. ("Verizon") submits for filing its Formal Complaint ("Complaint") against Wide Voice, LLC. Consistent with the Commission's rules (47 C.F.R. § 1.734), this Complaint is being filed via ECFS. A copy of this Complaint is being served on counsel for Wide Voice, LLC.

Please call me at (202) 515-2179 if you have any questions regarding this matter.

Respectfully submitted,

/s/ *Curtis L. Groves*
Curtis L. Groves
*Counsel for MCI Communications Services, Inc.*

FCC 485
November
2014

**Federal Communications Commission**
**Washington, D.C. 20554**

OMB Control Number
3060-0411

# SECTION 208 FORMAL COMPLAINT INTAKE FORM

| |
|---|
| 1. Case Name: MCI Communications Services, Inc. v. Wide Voice, LLC, Proc. No. 19-121, Bureau ID EB-19-MD-003 |
| 2. Complainant's Name, Address, Phone and Facsimile Number, e-mail address (if applicable):<br>MCI Communications Services, Inc., 1300 I Street, N.W., Suite 500 East, Washington, DC 20005 (202) 515-2179 |
| 3. Defendant's Name, Address, Phone and Facsimile Number (to the extent known), e-mail address (if applicable):<br>Wide Voice, LLC, 410 S. Rampart, Suite 390, Las Vegas, NV 89145 (702) 553-3007 |
| 4. Complaint alleges violation of the following provisions of the Communications Act of 1934, as amended:<br>Sections 201(b) and 203(c) |

Answer (Y)es, (N)o or N/A to the following:

Y 5. Complaint conforms to the specifications prescribed by 47 C.F.R. Section 1.734.

Y 6. Complaint complies with the pleading requirements of 47 C.F.R. Section 1.720.

Y 7. Complaint conforms to the format and content requirements of 47 C.F.R. Section 1.721, including but not limited to:

Y a. Complaint contains a complete and fully supported statement of facts, including a detailed explanation of the manner in which the defendant is alleged to have violated the provisions of the Communications Act of 1934, as amended, or Commission rules or Commission orders.

Y b. Complaint includes proposed findings of fact, conclusions of law, and legal analysis relevant to the claims and arguments set forth in the Complaint.

Y c. If damages are sought in this Complaint, the Complaint comports with the specifications prescribed by 47 C.F.R. Section 1.722(a), (c).

Y d. Complaint contains a certification that complies with 47 C.F.R Section 1.72l(a)(8), and thus includes, among other statements, a certification that: (1) complainant mailed a certified letter outlining the allegations that formed the basis of the complaint it anticipated filing with the Commission to the defendant carrier; (2) such letter invited a response within a reasonable period of time; and (3) complainant has, in good faith, discussed or attempted to discuss, the possibility of settlement with each defendant prior to the filing of the formal complaint.

N e. A separate action has been filed with the Commission, any court, or other government agency that is based on the same claim or the same set of facts stated in the Complaint, in whole or in part. If yes, please explain:

_____

N f. Complaint seeks prospective relief identical to the relief proposed or at issue in a notice-and-comment proceeding that is concurrently before the Commission. If yes, please explain:

_____

Y g. Complaint includes an information designation that contains:

Y (1) A complete description of each document, data compilation, and tangible thing in the complainant's possession, custody, or control that is relevant to the facts alleged with particularity in the Complaint, including: (a) its date of preparation, mailing, transmittal, or other dissemination, (b) its author, preparer, or other source, (c) its recipient(s) or intended recipient(s), (d) its physical location, and (e) its relevance to the matters contained in the Complaint; and

Y (2) The name, address, and position of each individual believed to have firsthand knowledge of the facts alleged with particularity in the Complaint, along with a description of the facts within any such individual's knowledge; and

Y (3) A complete description of the manner in which the complainant identified all persons with information and designated all documents, data compilations. and tangible things as being relevant to the dispute, including, but not limited to, identifying the individual(s) that conducted the information search and the criteria used to identify such persons, documents, data compilations, tangible things, and information.

Y h. Attached to the Complaint are copies of all affidavits, tariff provisions, written agreements, offers, counter-offers, denials, correspondence, documents, data compilations, and tangible things in the complainant's possession, custody, or control, upon which the complainant relies or intends to rely to support the facts alleged and legal arguments made in the Complaint.

Y i. Certificate of service is attached and conforms to the specifications prescribed by 47 C.F.R. Sections 1.47(g) and 1.735(f).

Y j. Verification of payment of filing fee in accordance with 47 C.F.R. Sections 1.721(13) and 1.1106 is attached.

N/A 8. If complaint is filed pursuant to 47 U.S.C. Section 271(d)(6)(B), complainant indicates therein whether it is willing to waive the 90-day complaint resolution deadline.

Y 9. All reported FCC orders relied upon have been properly cited in accordance with 47 C.F.R. Sections 1.14 and 1.720(i).

N/A 10. Copy of Complaint has been served by hand-delivery on either the named defendant or one of the defendant's registered agents for service of process in accordance with 47 C.F.R. Section 1.47(e) and 47 C.F.R. Section 1.735(c).

Y 11. If more than ten pages, the Complaint contains a table of contents and summary, as specified in 47 C.F.R. Section 1.49(b) and (c).

Y 12. The correct number of copies required by 47 C.F.R. Section 1.51(c), if applicable, and 47 C.F.R. Section 1.735(b) have been filed.

Y 13. Complaint has been properly signed and verified in accordance with 47 C.F.R. Section 1.52 and 47 C.F.R. Section 1.734(c).

N/A 14. If Complaint is by multiple complainants, it complies with the requirements of 47 C.F.R. Section 1.723(a).

Y 15. If Complaint involves multiple grounds, it complies with the requirements of 47 C.F.R. Section 1.723(b).

N/A 16. If Complaint is directed against multiple defendants, it complies with the requirements of 47 C.F.R. Section 1.735(a)-(b).

Y 17. Complaint conforms to the specifications prescribed by 47 C.F.R. Section 1.49.

**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**

| | |
|---|---|
| **In the Matter of**<br><br>**MCI COMMUNICATIONS SERVICES, INC.,**<br><br>***Complainant*,**<br><br>**v.**<br><br>**WIDE VOICE, LLC,**<br><br>***Defendant.*** | **Proceeding Number 19-121**<br>**Bureau ID Number**<br>**EB-19-MD-003** |

# FORMAL COMPLAINT OF MCI COMMUNICATIONS SERVICES, INC.


Scott H. Angstreich
Joshua Hafenbrack
Sean Nadel
KELLOGG, HANSEN, TODD, FIGEL & FREDERICK, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Curtis L. Groves
VERIZON
1300 I Street, N.W., Suite 500 East
Washington, D.C. 20005
(202) 515-2179

*Counsel for MCI Communications Services, Inc.*


June 14, 2019

**TABLE OF CONTENTS**

Page

## TABLE OF AUTHORITIES

Page

**CASES**



**STATUTES AND REGULATIONS**

**ADMINISTRATIVE MATERIALS**

**OTHER MATERIALS**

**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**

| | |
|---|---|
| **In the Matter of**<br><br>**MCI COMMUNICATIONS SERVICES, INC.,**<br><br>***Complainant*,**<br><br>**v.**<br><br>**WIDE VOICE, LLC,**<br><br>***Defendant.*** | **Proceeding Number 19-121**<br>**Bureau ID Number**<br>**EB-19-MD-003** |

**FORMAL COMPLAINT OF MCI COMMUNICATIONS SERVICES, INC.**

1. Pursuant to §§ 201, 203, 206, and 208 of the Communications Act (the "Act"), 47 U.S.C. §§ 201, 203, 206, 208, and § 1.720 *et seq.* of the rules of the Federal Communications Commission ("Commission"), 47 C.F.R. § 1.720 *et seq.*, Complainant MCI Communications Services, Inc. ("Verizon") hereby brings this Formal Complaint against Defendant Wide Voice, LLC ("Wide Voice"), alleging violations of §§ 201 and 203 of the Act, and states in support as follows:

## SUMMARY

2. This dispute concerns Wide Voice's unlawful tariff — and billing pursuant to that tariff — with respect to terminating switched access traffic. In particular, Wide Voice has violated 47 C.F.R. §§ 51.907 and 61.26(b) by failing to implement properly the final two stages of the seven-step Commission-mandated transition to bill-and-keep for terminating switched access charges. In addition, Wide Voice has tried to protect its unlawful billing practices

through tariffed dispute resolution provisions that the Commission had already held are unlawful before Wide Voice added them to its tariff.

3. *First*, Wide Voice contends that, because *it* is not a price cap incumbent local exchange carrier ("ILEC"), Wide Voice can still charge its standard tandem switched transport rates of as much as $0.03993227 — instead of $0.0007 per minute as of July 29, 2017, and $0 per minute as of August 2, 2018 — for terminating switched access calls that are routed through both a Wide Voice end office switch and Wide Voice tandem switch. Wide Voice is wrong: the CLEC Benchmark Rule[1] extends those maximum rates for terminating switched access charges to competitive local exchange carriers ("CLECs"), like Wide Voice, that operate both tandem switches and end office switches. Wide Voice's tariff is therefore unlawful to the extent that, in § 3.6.4, it authorizes Wide Voice to bill the much higher standard tandem switched transport rate elements for such traffic. And, insofar as the Commission finds that tariff ambiguous, it should construe it against Wide Voice, find that it properly implements the sixth[2] and seventh[3] steps of the transition, and find that Wide Voice violated its tariff by billing Verizon at rates above $0.0007 and $0 per minute.

4. *Second*, some of the traffic at issue in this Formal Complaint traversed a Wide Voice tandem before being routed to an end office that, although not directly owned by Wide Voice, LLC, is owned by a company that is an affiliate of Wide Voice, because they share common ownership and/or control. For the same reasons set out above, Wide Voice has violated and continues to violate §§ 51.907 and 61.26(b) — or, in the alternative, should be found to have

[1] 47 C.F.R. § 61.26(b)(1).

[2] *Id.* § 51.907(g)(2).

[3] *Id.* § 51.907(h).

violated its tariff — by charging its higher standard rate elements for terminating this traffic rather than $0.0007 or $0, depending on the time period.

5. *Third*, Wide Voice has defended its conduct against Verizon's disputes of Wide Voice's unlawful charges by relying on two unlawful dispute resolution provisions. The first purports to make Wide Voice's invoices "binding" on a customer unless Wide Voice receives written disputes within a "reasonable period."[4] The second purports to require a customer, when it "submit[s] a good faith dispute," to "tender payment . . . for any disputed charges."[5] Even though the Commission in 2011 held that such tariff provisions are unjust and unreasonable,[6] Wide Voice added these provisions to its tariff in July 2015.

6. The Commission should find that Wide Voice has violated 47 U.S.C. § 201 and declare illegal, unlawful, and void *ab initio* §§ 2.10.4(A), 2.10.4(B), and 3.6.4 of Wide Voice's FCC Tariff No. 3. The Commission should find further that Wide Voice violated 47 U.S.C. § 203 by billing Verizon pursuant to that unlawful tariff and by collecting amounts from Verizon. In the alternative, with respect specifically to § 3.6.4, the Commission should construe any ambiguities in that section against Wide Voice and find that, for calls delivered to end offices that Wide Voice or its affiliates own, Wide Voice violated § 203 by billing Verizon in excess of $0.0007 (as of July 29, 2017) and $0 (as of August 2, 2018) and collecting such amounts from Verizon. Regardless of how it construes § 3.6.4, the Commission should enter a declaratory ruling prohibiting Wide Voice prospectively from billing any amounts for switched access traffic terminated through both a Wide Voice tandem switch and an end office switch that

[4] Ex. 8, Wide Voice FCC Tariff No. 3, § 2.10.4(A) (VZ_0000248).

[5] *Id.* § 2.10.4(B) (VZ_0000249).

[6] *See* Memorandum Opinion and Order, *Sprint Commc'ns Co. v. N. Valley Commc'ns, LLC*, 26 FCC Rcd 10780, ¶ 14 (2011) ("*Northern Valley Order*").

either Wide Voice or its affiliates own, and ordering it promptly to amend its tariff to bring it into compliance with the Commission's rules. Finally, the Commission should award monetary damages to Verizon for amounts that Wide Voice unlawfully billed and collected.[7]

## JURISDICTION

7. The Commission has jurisdiction over this Complaint under § 208 of the Act.

8. Verizon requests a declaratory ruling that Wide Voice's tariffs are unlawful and void *ab initio* as described in this Complaint and that its invoices issued pursuant to those tariffs are unlawful.

9. Verizon also requests damages for Wide Voice's unlawful and unreasonable conduct, including but not limited to the amounts Verizon paid (and Wide Voice kept) above the lawful rate. However, pursuant to 47 C.F.R. § 1.723(c) and (d), Verizon requests that the Commission first determine liability and then decide Verizon's damages in a separate and subsequent proceeding.

## STATEMENT REGARDING SUPPORTING MATERIAL

10. As part of this Complaint, Verizon attaches as exhibits copies of the documents and data compilations upon which it relies.[8] Along with its Complaint and accompanying exhibits, Verizon also submits the following materials: (i) a Legal Analysis that explains why Wide Voice has violated the Act and the Commission's implementing rules; (ii) a supporting

[7] 47 C.F.R. § 1.723(a) (complaint "must contain a clear and unequivocal request for damages").

[8] *See* Exs. 1-9.

declaration by Traci Morgan; (iii) an information designation; and (iv) other required forms and certifications.[9]

## REQUIRED CERTIFICATIONS

11. Verizon certifies that it has attempted in good faith to discuss the possibility of settlement with Wide Voice prior to filing this Formal Complaint.[10] Although Verizon and Wide Voice have discussed settlement, including via a telephone conference on March 12, 2019, the parties have been unable to reach a compromise and remain at an impasse.

12. Verizon certifies that there are no actions related to this Formal Complaint.[11]

## THE PARTIES

13. Complainant MCI Communications Services, Inc. is a Delaware corporation that provides and purchases communications and other services, with its principal place of business in New Jersey. This Complaint relates to Verizon's role as a customer and purchaser of switched access services, not as a common carrier.

14. Defendant Wide Voice, LLC is a Nevada limited liability company with its principal place of business in Nevada. For purposes of this Complaint, Wide Voice is a common carrier — and specifically a CLEC — subject to the Act.

## RELEVANT NON-PARTIES

15. WideVoice Communications Inc. ("WideVoice Communications"): WideVoice Communications is a Nevada corporation formed on November 7, 2008, with its principal place of business at 410 S. Rampart Boulevard, Suite 390, Las Vegas, NV 89145. WideVoice

---

[9] *See* 47 C.F.R. § 1.722. In accordance with the Staff's Order dated May 18, 2017, Verizon is not submitting a document log describing all documents, data compilations, and other tangible things relevant to the facts alleged in this Complaint.

[10] S*ee id.* § 1.722(g).

[11] *See id.* § 1.722(h).

Communications and Defendant Wide Voice, LLC share multiple common executives and employees. *First*, David Erickson is the majority owner of WideVoice Communications and has served as Secretary, Treasurer, and Director for that company;[12] Mr. Erickson has served as President (from at least 2008 through 2010) and Managing Member (from at least 2007 through 2011) of Wide Voice, LLC.[13] *Second*, Patrick Chicas is a founding member of both WideVoice Communications and Wide Voice, LLC,[14] the current President of WideVoice Communications[15] and a prior President of Wide Voice, LLC,[16] and owns 10% of both

[12] Application of WideVoice Communications Inc. for a Certificate of Public Convenience and Necessity at 5, *Application of WideVoice Communications Inc. for a Certificate of Authority to Provide Interexchange Telecommunications Services and Local Exchange Services in South Dakota*, Docket No. TC09-083 (S.D. P.U.C. filed Aug. 11, 2009), https://puc.sd.gov/commission/dockets/telecom/2009/tc09-083/081109.pdf; *see also* Mot. Hr'g Tr. 66:20-67:5, *Sprint Commc'ns Co. v. Native Am. Telecom, LLC*, Civ. No. 10-4110 (D.S.D. Mar. 3, 2011), *attached as* Exhibit RGF-7 to Sprint Communications Co. L.P.'s Direct Testimony of Randy G. Farrar, *Application of Native American Telecom, LLC for a Certificate of Authority to Provide Local Exchange Service Within the Study Area of Midstate Communications, Inc.*, Docket No. TC11-087 (S.D. P.U.C. filed Aug. 30, 2013), https://puc.sd.gov/commission/dockets/telecom/2011/TC11-087/testimony/sprint/083013/rfg-7.pdf.

[13] Letter from David Erickson, President, Wide Voice, LLC, to Marlene H. Dortch, Secretary, FCC, EB Docket No. 06-36 (filed June 6, 2008), https://ecfsapi.fcc.gov/file/6520027523.pdf; Letter from David Erickson, President, Wide Voice, LLC, to Marlene H. Dortch, Secretary, FCC, EB Docket No. 06-36 (filed Feb. 27, 2009), https://ecfsapi.fcc.gov/file/6520198925.pdf; Letter from David Erickson, President, Wide Voice, LLC, to Marlene H. Dortch, Secretary, FCC, EB Docket No. 06-36 (filed Feb. 24, 2010), https://ecfsapi.fcc.gov/file/7020390805.pdf.

[14] Application of WideVoice Communications Inc. for a Certificate of Public Convenience and Necessity at 6, *Application of WideVoice Communications Inc. for a Certificate of Authority to Provide Interexchange Telecommunications Services and Local Exchange Services in South Dakota*, Docket No. TC09-083 (S.D. P.U.C. filed Aug. 11, 2009), https://puc.sd.gov/commission/dockets/telecom/2009/tc09-083/081109.pdf.

[15] *Id.*; *see also* Letter from Carey Roesel, Consultant, Inteserra Consulting Group, to Marlene H. Dortch, Secretary, FCC, EB Docket No. 06-36 (filed Feb. 21, 2019), https://ecfsapi.fcc.gov/file/10221298046529/Wide%20Voice%20Communications%20FCC%20CPNI%20Certification%20for%20CY2019.pdf.

[16] Direct Testimony of Patrick Chicas on Behalf of Wide Voice, LLC at 2-3, *Application of Wide Voice, LLC for a Certificate of Authority to Provide Local Exchange Services and*

companies.[17] *Third*, Andrew Nickerson is the current CEO of Wide Voice, LLC[18] and, in a 2018 filing with the Nevada Secretary of State, was also listed as the CEO, President, Secretary, and Treasurer of WideVoice Communications.[19] *Fourth*, Jeffrey Holoubek was the Director of Legal Affairs for both WideVoice Communications and Wide Voice, LLC from 2009 through 2015.[20] Mr. Holoubek has asserted, in a filing in federal court, that Wide Voice, LLC and WideVoice Communications are "comprised of the exact same employees" who have "the same duties and responsibilities."[21] *Fifth*, Keith Williams was the Senior Network Engineer and Director of IP Services at Wide Voice, LLC from 2009 to 2016, and a network engineer at WideVoice

---

*Interexchange Long Distance Services in South Dakota*, Docket No. TC11-088 (S.D. P.U.C. filed Feb. 7, 2012), https://puc.sd.gov/commission/dockets/telecom/2011/TC11-088/chicastestimony.pdf.

[17] Wide Voice, LLC's Responses to Staff's Data Request 1, at 1, *Application of Wide Voice, LLC for a Certificate of Authority to Provide Local Exchange and Interexchange Long Distance Services in South Dakota*, Docket No. TC17-001 (S.D. P.U.C. filed Feb. 3, 2017), https://puc.sd.gov/commission/dockets/telecom/2017/tc17-001/dr1.pdf.

[18] *See* Reply Comments of Wide Voice, LLC, *Connect America Fund; CenturyLink Petition for Limited Stay*, WC Docket No. 10-90 (FCC filed May 11, 2017), https://ecfsapi.fcc.gov/file/1051194918647/Wide%20Voice%20LLC%20Reply%20Comments%20Final%20051117.pdf; Comments of Wide Voice LLC, *Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, WC Docket No. 18-155 (FCC filed July 20, 2018), https://ecfsapi.fcc.gov/file/1072067377484/Wide%20Voice%2018-155%20Access%20Arbitrage%20Comments.pdf; Reply Comments of Wide Voice LLC, *Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, WC Docket No. 18-155 (FCC filed Aug. 3, 2018), https://ecfsapi.fcc.gov/file/1080314351998/Wide%20Voice%2018-155%20Access%20Arbitrage%20Reply%20Comments.pdf; Letter from Andrew Nickerson, CEO, Wide Voice, LLC, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92, WC Docket Nos. 07-135 & 18-155 (filed Jan. 15, 2019), https://ecfsapi.fcc.gov/file/101150292207763/Wide%20Voice%20Ltr%20and%20Access%20Study%20FCC%2001-92%20et%20al%20.pdf.

[19] WideVoice Communications Inc., (Profit) Initial/Annual List of Officers, Directors and State Business License Application (Nev. Sec'y of State filed Oct. 19, 2018).

[20] Compl. for Damages ¶¶ 15, 34-35, *Holoubek v. Native Am. Telecom, LLC*, No. 4:18-cv-04155-KES (D.S.D. filed Nov. 23, 2018).

[21] *Id.* ¶ 24 n.2.

Communications.[22] *Sixth*, Tandy DeCosta is a co-founder and the Director of Telephony Services of Wide Voice, LLC, and owns at least 20% of Wide Voice, LLC, as well as 2% of WideVoice Communications.[23] WideVoice Communications owns a substantial portion of two of the affiliated LECs that terminated some of the traffic at issue in this Formal Complaint.

16. Native American Telecom, LLC ("Native American Telecom"): Native American Telecom is a LEC that is organized under the laws of the Crow Creek Sioux Tribe[24] and has its principal office at 210 Sam Boy Drive, Fort Thompson, SD 57339. WideVoice

[22] Affidavit of Keith Williams in Opposition to Sprint's Motion for Preliminary Injunction ¶ 1, *Sprint Commc'ns Co. v. Maule*, No. 4:10-cv-04110-KES, Dkt. 44-3 (D.S.D. filed Oct. 13, 2010); Hr'g Tr. 13:24-14:4, *Sprint Commc'ns Co. v. Maule*, No. 4:10-cv-04110-KES (D.S.D. Oct. 14, 2010), *attached as* Exhibit RGF-5 to Sprint Sprint Communications Co. L.P.'s Direct Testimony of Randy G. Farrar, *Application of Native American Telecom, LLC for a Certificate of Authority to Provide Local Exchange Service Within the Study Area of Midstate Communications, Inc.*, Docket No. TC11-087 (S.D. P.U.C. filed Aug. 30, 2013), https://puc.sd.gov/commission/dockets/telecom/2011/TC11-087/testimony/sprint/083013/rfg-5.pdf; LinkedIn, *Keith Williams*, https://www.linkedin.com/in/keith-williams-2a12781/.

[23] Application for a Certificate of Authority on Behalf of Wide Voice, LLC, Ex. B at 11, *Application of Wide Voice, LLC for a Certificate of Authority to Provide Local Exchange and Interexchange Long Distance Services in South Dakota*, Docket No. TC17-001 (S.D. P.U.C. filed Jan. 12, 2017), https://puc.sd.gov/commission/dockets/telecom/2017/tc17-001/exhibitb.pdf; Ex. 1 at VZ_0000017-VZ_0000028, VZ_0000030-VZ_0000031; Application for a Certificate of Authority on Behalf of Wide Voice, LLC at 2, *Application of Wide Voice, LLC for a Certificate of Authority to Provide Local Exchange Services and Interexchange Long Distance Services in South Dakota*, Docket No. TC11-088 (S.D. P.U.C. filed Oct. 27, 2011), https://puc.sd.gov/commission/dockets/telecom/2011/TC11-088/application.pdf; Application of WideVoice Communications Inc. for a Certificate of Public Convenience and Necessity at 5, *Application of WideVoice Communications Inc. for a Certificate of Authority to Provide Interexchange Telecommunications Services and Local Exchange Services in South Dakota*, Docket No. TC09-083 (S.D. P.U.C. filed Aug. 11, 2009), https://puc.sd.gov/commission/dockets/telecom/2009/tc09-083/081109.pdf.

[24] Native American Telecom, LLC, Application for Certificate of Authority: Foreign Limited Liability Company (S.D. Sec'y of State filed Apr. 23, 2014), https://sosenterprise.sd.gov/BusinessServices/Business/ImageDownload.aspx?id=191218008161218177158253091076117173195110190163.

Communications owns 24% of Native American Telecom.[25] In addition, the Wide Voice companies and Native American Telecom have or had at least seven executives in common. *First*, David Erickson is a Director of Native American Telecom.[26] *Second*, Patrick Chicas has been a Director of Native American Telecom and owns 2.4% of the company.[27] *Third*, Jeffrey Holoubek was President (or acting President) and Director of Native American Telecom from approximately 2009 to 2015.[28] *Fourth*, Andrew Nickerson became President of Native

---

[25] Direct Testimony of David Erickson on Behalf of Native American Telecom, LLC at 3-4, *Application of Native American Telecom, LLC for a Certificate of Authority To Provide Local Exchange Service Within the Study Area of Midstate Communications, Inc.*, Docket No. TC11-087 (S.D. P.U.C. filed Apr. 20, 2012), https://puc.sd.gov/commission/dockets/telecom/2011/TC11-087/042012DEtestimony.pdf; *see also* Joint Answer of Defendants, Native American Telecom, LLC and Native American Telecom – Pine Ridge, LLC to Plaintiff's Complaint ¶¶ 18-19, *Holoubek v. Native Am. Telecom, LLC*, No. 4:18-cv-04155-KES (D.S.D. filed Mar. 6, 2019).

[26] Application for Certificate of Authority, Ex. B, *Application of Native American Telecom, LLC for a Certificate of Authority to Provide Local Exchange Service Within the Study Area of Midstate Communications, Inc.*, Docket No. TC11-087 (S.D. P.U.C. filed Oct. 11, 2011), https://puc.sd.gov/commission/dockets/telecom/2011/TC11-087/exhibitb.pdf; Revised Application for Certificate of Authority, Ex. B, *Application of Native American Telecom, LLC for a Certificate of Authority to Provide Local Exchange Service Within the Study Area of Midstate Communications, Inc.*, Docket No. TC11-087 (S.D. P.U.C. filed Jan. 27, 2012), https://puc.sd.gov/commission/dockets/telecom/2011/TC11-087/revisedapplicationexhibitb.pdf; Amended Application for Certificate of Authority, Ex. B, *Application of Native American Telecom, LLC for a Certificate of Authority to Provide Local Exchange Service Within the Study Area of Midstate Communications, Inc.*, Docket No. TC11-087 (S.D. P.U.C. filed June 13, 2013), https://puc.sd.gov/commission/dockets/telecom/2011/TC11-087/amendedexhibitb.pdf; Trial Tr. 228:25-229:4, 243:16-24 (Apr. 13, 2016) (testimony of David Erickson), *Sprint Commc'ns Co. v. Native Am. Telecom, LLC*, No. 4:10-cv-04110-KES, Dkt. 308-1 (D.S.D. filed May 8, 2016).

[27] Amended Application for Certificate of Authority, Ex. B, *Application of Native American Telecom, LLC for a Certificate of Authority to Provide Local Exchange Service Within the Study Area of Midstate Communications, Inc.*, Docket No. TC11-087 (S.D. P.U.C. filed June 13, 2013), https://puc.sd.gov/commission/dockets/telecom/2011/TC11-087/amendedexhibitb.pdf; Wide Voice, LLC's Responses to Staff's Data Request 1, at 1, *Application of Wide Voice, LLC for a Certificate of Authority to Provide Local Exchange and Interexchange Long Distance Services in South Dakota*, Docket No. TC17-001 (S.D. P.U.C. filed Feb. 3, 2017), https://puc.sd.gov/commission/dockets/telecom/2017/tc17-001/dr1.pdf.

[28] *Id.*

American Telecom after Mr. Holoubek was fired from his position with Wide Voice.[29] *Fifth*, Carlos Cestero is or was the Controller of both WideVoice Communications and Native American Telecom.[30] *Sixth*, Keith Williams was identified in 2013 as Native American Telecom's Director of IP Networks, Security, and Engineering.[31] *Seventh*, Tandy DeCosta is Native American Telecom's director for PSTN/TDM Networks and Regulatory Matters and owns 0.48% of the company.[32] In addition, one member of Native American Telecom's board of

[29] *See* Letter from Carey Roesel, Consultant to Native American Telecom, LLC, Technologies Management Inc., to Marlene H. Dortch, Secretary, FCC, EB Docket No. 06-36 (filed Feb. 12, 2016), https://ecfsapi.fcc.gov/file/60001427260.pdf; Letter from Carey Roesel, Consultant to Native American Telecom – Pine Ridge, LLC, Technologies Management Inc., EB Docket No. 06-36 (filed Feb. 12, 2016), https://ecfsapi.fcc.gov/file/60001427274.pdf.

[30] Mr. Cestero testified in federal court that, in addition to his duties with Wide Voice, he took over as controller for Native American Telecom in July 2010 as "a cost efficiency move" because "Native American Telecom cannot afford to pay for an outside accountant." Mot. Hr'g Tr. 17:20-18:14, 20:17-22, *Sprint Commc'ns Co. v. Native Am. Telecom, LLC*, Civ. No. 10-4110 (D.S.D. Mar. 3, 2011), *attached as* Exhibit RGF-7 to Sprint Comm. Co. L.P.'s Direct Testimony of Randy G. Farrar, *Application of Native American Telecom, LLC for a Certificate of Authority to Provide Local Exchange Service Within the Study Area of Midstate Communications, Inc.*, Docket No. TC11-087 (S.D. P.U.C. filed Aug. 30, 2013), https://puc.sd.gov/commission/dockets/telecom/2011/TC11-087/testimony/sprint/083013/rfg-7.pdf. Mr. Cestero further testified that, as of 2013, WideVoice Communications Inc. had loaned money to Native American Telecom "[t]o cover operating expenses," because Native American Telecom "[d]idn't have enough funds to cover its own expenses." *Id.* at 37:25-38:7.

[31] Direct Testimony of Jeff Holoubek at 10, *Application of Native American Telecom, LLC for a Certificate of Authority to Provide Local Exchange Service Within the Study Area of Midstate Communications, Inc.*, Docket No. TC11-087 (S.D. P.U.C. filed July 26, 2013), https://puc.sd.gov/commission/dockets/telecom/2011/TC11-087/jhtestimony.pdf.

[32] *Id.* at 9. Ms. DeCosta owns 2% of WideVoice Communications Inc., which owns 24% of Native American Telecom. *See* Application of WideVoice Communications Inc. for a Certificate of Public Convenience and Necessity at 5, *Application of WideVoice Communications Inc. for a Certificate of Authority to Provide Interexchange Telecommunications Services and Local Exchange Services in South Dakota*, Docket No. TC09-083 (S.D. P.U.C. filed Aug. 11, 2009), https://puc.sd.gov/commission/dockets/telecom/2009/tc09-083/081109.pdf; Direct Testimony of David Erickson on Behalf of Native American Telecom, LLC at 3-4, *Application of Native American Telecom, LLC for a Certificate of Authority To Provide Local Exchange Service Within the Study Area of Midstate Communications, Inc.*, Docket No. TC11-087 (S.D. P.U.C. filed Apr. 20, 2012), https://puc.sd.gov/commission/dockets/telecom/2011/TC11-087/042012DEtestimony.pdf.

directors has testified in federal court that "WideVoice" — in an apparent reference to WideVoice Communications — keeps the financial books for Native American Telecom.[33]

17. Native American Telecom – Pine Ridge, LLC ("Native American Telecom–PR"): Native American Telecom–PR is a LEC organized under the laws of the Oglala Sioux Tribe[34] and has its principal office at 10 White Tail Deer Road, Pine Ridge, SD 57770.[35] WideVoice Communications owns 24% of Native American Telecom–PR.[36] In addition, Wide Voice and Native American Telecom–PR have or had the same seven executives in common as Wide Voice and Native American Telecom, as described in the preceding paragraph.

18. Based on the foregoing, the common employees and control between Wide Voice and the relevant non-parties described above includes:

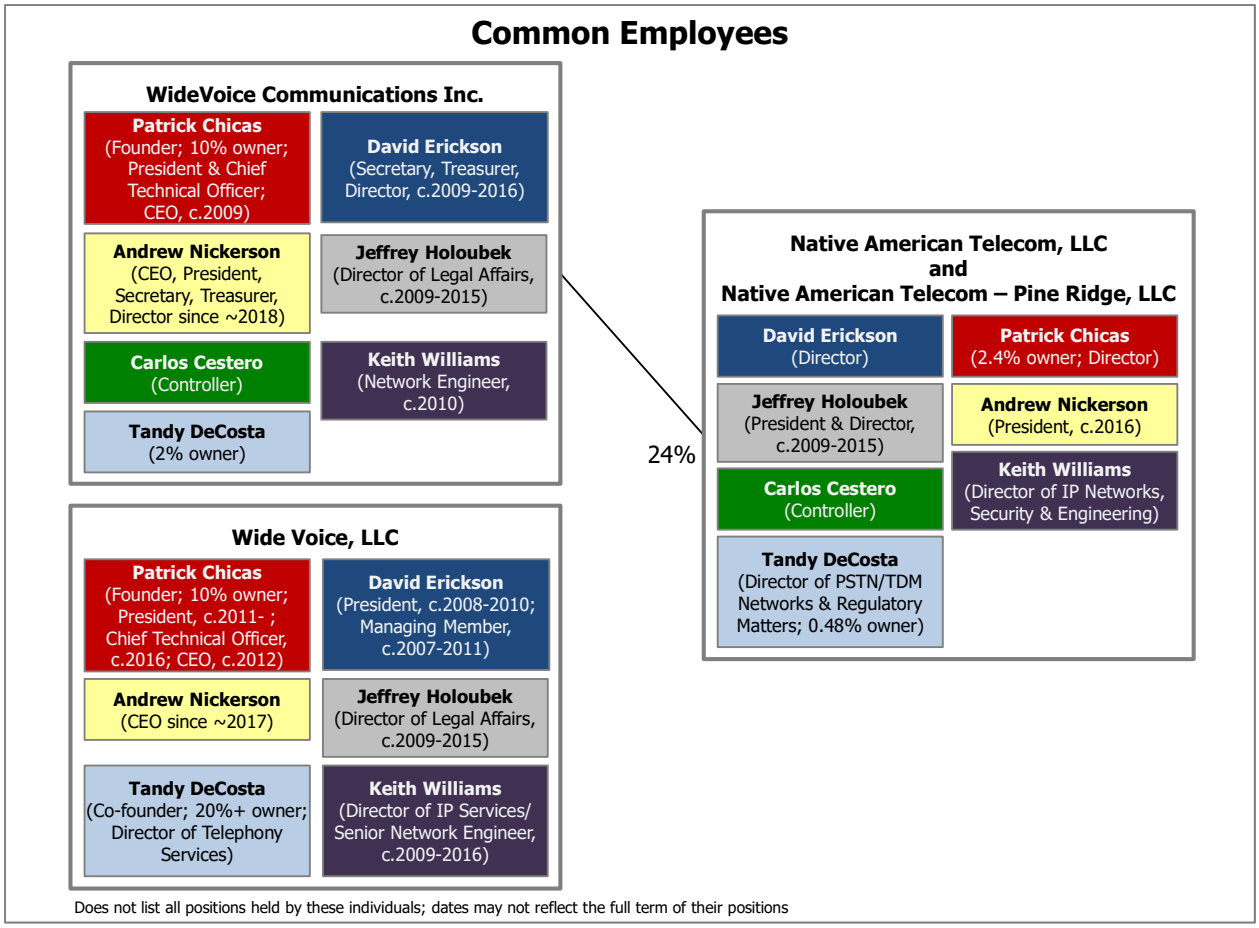
---

[33] Mot. Hr'g Tr. 172:22-173:6, *Sprint Commc'ns Co. v. Native Am. Telecom, LLC*, Civ. No. 10-4110 (D.S.D. Mar. 3, 2011), *attached as* Exhibit RGF-7 to Sprint Comm. Co. L.P.'s Direct Testimony of Randy G. Farrar, *Application of Native American Telecom, LLC for a Certificate of Authority to Provide Local Exchange Service Within the Study Area of Midstate Communications, Inc.*, Docket No. TC11-087 (S.D. P.U.C. filed Aug. 30, 2013), https://puc.sd.gov/commission/dockets/telecom/2011/TC11-087/testimony/sprint/083013/rfg-7.pdf.

[34] Native American Telecom – Pine Ridge, LLC, Application for Certificate of Authority: Foreign Limited Liability Company (S.D. Sec'y of State Aug. 7, 2015), https://sosenterprise.sd.gov/BusinessServices/Business/ImageDownload.aspx?id=214072249035191122155209206244180162132122158161.

[35] Native American Telecom – Pine Ridge, LLC, Annual Report: Foreign Limited Liability Company (S.D. Sec'y of State filed July 12, 2018), https://sosenterprise.sd.gov/BusinessServices/Business/ImageDownload.aspx?id=162133041061231088202102170254090063112077076194.

[36] Joint Answer of Defendants, Native American Telecom, LLC and Native American Telecom – Pine Ridge, LLC to Plaintiff's Complaint ¶¶ 18-19, *Holoubek v. Native Am. Telecom, LLC*, No. 4:18-cv-04155-KES (D.S.D. filed Mar. 6, 2019).




## THIS IS A FIVE-MONTH COMPLAINT

19. This Complaint relates to the "lawfulness of a charge, classification, regulation, or practice," and the Commission is therefore required to "issue an order concluding [its] investigation within 5 months after the date on which the complaint was filed."[37] Specifically, Verizon claims that Wide Voice's tariff provision (§ 3.6.4) governing its tandem-switched transport access services is unlawful, unjust, and unreasonable, which makes this Complaint subject to the five-month statutory deadline under § 208(b)(1). Additionally, § 2.10.4(A)-(B) of Wide Voice's federal tariff contains dispute resolution provisions that are unlawful, unjust, and

[37] 47 U.S.C. § 208(b)(1).

unreasonable under existing Commission precedent, which also makes this Complaint subject to the five-month statutory deadline under § 208(b)(1).

## FACTS IN SUPPORT OF COMPLAINT

## I. REGULATORY BACKGROUND

### A. The Transition to Bill-and-Keep

20. As part of the 2011 *Connect America Fund Order*,[38] the Commission "adopt[ed] bill-and-keep as the default methodology for all intercarrier compensation traffic."[39]

21. The Commission also adopted a multi-year transition for terminating switched access rates that "required price cap carriers to reduce — or 'step down' — a subset of their terminating tandem switching and transport charges in year six of the transition plan and to further reduce those same charges to zero (i.e., bill-and-keep) in year seven."[40]

22. This dispute concerns Step Six (in effect between July 1, 2017 and June 30, 2018) and Step Seven (in effect beginning July 1, 2018).

23. Step Six is codified in § 51.907(g)(2), which provides: "Each Price Cap Carrier shall establish, for interstate and intrastate terminating traffic traversing a tandem switch that the terminating carrier or its affiliates owns, Tandem-Switched Transport Access Service[41] rates no greater than $0.0007 per minute."

---

[38] Report and Order and Further Notice of Proposed Rulemaking, *Connect America Fund*, 26 FCC Rcd 17663 (2011) ("*Connect America Fund Order*").

[39] *Connect America Fund Order* ¶ 736; *see also* Memorandum Opinion and Order, *Level 3 Commc'ns, LLC v. AT&T Inc.*, 33 FCC Rcd 2388, ¶ 1 (2018) ("*Level 3 Order*") ("In 2011, the Commission comprehensively reformed its intercarrier compensation regime and adopted a timeline for transitioning to a uniform national 'bill-and-keep' framework for telecommunications traffic exchanged with local exchange carriers (LECs).")

[40] *Level 3 Order* ¶ 2.

[41] "Tandem-switched transport" is defined as "transport of traffic that is switched at a tandem switch — (1) [b]etween the serving wire center and the end office, or (2) [b]etween the

24. Under Step Six, when a price cap LEC provides end office switching on a call routed through a tandem that it owns, or that its affiliate owns, the price cap LEC cannot charge a rate higher than $0.0007.[42]

25. Under the Communications Act, an affiliate is "a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person." 47 U.S.C. § 153(2). Ownership, for purposes of this definition, "means to own an equity interest (or the equivalent thereof) of more than 10 percent." *Id.* The Commission did not adopt a separate definition of affiliate for purposes of § 51.907. *See* 47 C.F.R. § 51.903.

26. Step Seven is codified in § 51.907(h), which provides: "Beginning July 1, 2018, notwithstanding any other provision of the Commission's rules, each Price Cap carrier shall, in accordance with bill-and-keep, as defined in § 51.713, revise and refile its interstate switched access tariffs and any state tariffs to remove any intercarrier charges applicable to terminating tandem-switched access service traversing a tandem switch that the terminating carrier or its affiliate owns."

27. Under Step Seven, when a price cap LEC provides end office switching on a call routed through a tandem that it owns, or that its affiliate owns, the price cap LEC cannot charge any rate — that is, the applicable rate is $0.[43]

---

telephone company office containing the tandem switching equipment . . . and the end office." 47 C.F.R. § 69.2(ss).

[42] *Level 3 Order* ¶¶ 2, 11.

[43] *Id.* ¶ 2.

### B. Section 61.26 and Mandatory Detariffing

28. Section 51.907's Step Six and Step Seven step-down rates bind a CLEC like Wide Voice through § 61.26.

29. In the *Connect America Fund Order*, the Commission made clear that the seven-step transition to bill-and-keep applies to "**Price Cap Carriers and *CLECs that benchmark access rates to price cap carriers***."[44] The *Connect America Fund Order* further noted that the intercarrier compensation reforms "will generally apply to competitive LECs via the CLEC benchmarking rule," which is codified in § 61.26.[45]

30. Further, 47 C.F.R. § 51.911(c) provides that, beginning July 1, 2013, "all Competitive Local Exchange Carrier Access Reciprocal Compensation rates for switched exchange access services subject to this subpart shall be no higher than the Access Reciprocal Compensation rates charged by the competing incumbent local exchange carrier, in accordance with the same procedures specified in § 61.26" of the Commission's rules.

31. The only relevant exception is that CLECs have an "extra 15 days from the effective date of the tariff to which a competitive LEC is benchmarking to make its filing(s)."[46]

32. Section 61.26 — known as the "CLEC Benchmark Rule" — provides that "a CLEC shall not file a tariff for its interstate switched exchange access services that prices those services above" the "rate charged for such services by the competing ILEC."[47]

---

[44] *Connect America Fund Order* ¶ 801 fig. 9 (italics added).

[45] *Id.* ¶ 807.

[46] *Id*; *see also id.* ¶ 808 (considering and rejecting separate transition for CLECs).

[47] 47 C.F.R. § 61.26(b)(1); *see also* Seventh Report and Order and Further Notice of Proposed Rulemaking, *Access Charge Reform*, 16 FCC Rcd 9923 (2001).

33. A tariff "that includes rates in excess of the applicable benchmark in Section 61.26 is subject to mandatory detariffing" — that is, the "carrier is *prohibited* from filing a tariff with rates above the benchmark."[48]

34. The Commission explained to the Third Circuit the reason it prohibited the filing of tariffs containing "access charge rates in excess of the benchmark":

> [P]rohibiting those presumptively unreasonable rates from being tariffed in the first instance better serves the public interest by according IXCs (and, ultimately, consumers) more protection from unreasonably high interstate access rates than attempting to identify such unreasonable rates on an *ad hoc* basis after the tariffs are filed.[49]

35. The Commission has repeatedly held that, under the mandatory detariffing regime, if a CLEC files a tariff that violates § 61.26, that tariff is void *ab initio* and never deemed lawful.[50] Recently, the Commission held that a tariff that violates that prohibition was neither legal nor lawful.[51] On reconsideration, the Commission explained that a carrier cannot file "a rate that was prohibited by the Commission's rules."[52] Therefore, a tariff "filing that contains

---

[48] Memorandum Opinion and Order, *AT&T Servs., Inc. v. Great Lakes Comnet, Inc.*, 30 FCC Rcd 2586, ¶ 28 (2015) ("*Great Lakes Order*") (emphasis added).

[49] Br. for *Amicus Curiae* FCC at 27-28, *PAETEC Commc'ns, Inc. v. MCI Commc'ns Servs., Inc.*, Nos. 11-2268 *et al.* (3d Cir. Mar. 14, 2012), https://docs.fcc.gov/public/attachments/DOC-312984A1.pdf; *see id.* at 25 ("A CLEC tariff for interstate switched access services that includes rates in excess of the benchmark in Rule 61.26 is subject to mandatory detariffing. Under that regime, a carrier is *prohibited* from filing a tariff[.]").

[50] *See Great Lakes Order* ¶ 28 (under "mandatory detariffing," "a carrier *is prohibited from* filing a tariff with rates above the benchmark") (emphasis added); *see also Global NAPs, Inc. v. FCC*, 247 F.3d 252, 259-60 (D.C. Cir. 2001) ("Merely because a tariff is presumed lawful upon filing does not mean that it is lawful"; rather, "[s]uch tariffs still must comply with the applicable statutory and regulatory requirements," and "[t]hose that do not may be declared invalid."); Order, *GS Texas Ventures, LLC*, 29 FCC Rcd 10541, ¶¶ 5-6 (Pricing Pol'y Div. 2014).

[51] Memorandum Opinion and Order, *AT&T Corp. v. Iowa Network Servs., Inc. d/b/a Aureon Network Servs.*, 32 FCC Rcd 9677, ¶ 24 (2017).

[52] *See* Order on Reconsideration, *AT&T Corp. v. Iowa Network Servs., Inc. d/b/a Aureon Network Servs.*, 33 FCC Rcd 7964, ¶ 14 (2018) ("*Aureon Recon. Order*"); *Great Lakes Order*

rates that the carrier is not permitted to charge does not even meet the preliminary standard for a legal tariff filing" and "cannot become a 'deemed lawful' tariff by operation of Section 204(a)(3)," which accords lawful status to tariffs filed on a streamlined basis.[53] The Commission found that the tariff filing was "void *ab initio* and therefore never went into effect."[54]

### C. Wide Voice's Tariffs

36. On July 16, 2015, Wide Voice amended its FCC Tariff No. 3 (through Transmittal No. 5) to, *inter alia*, amend two dispute resolution provisions in § 2.10.4(A) and (B).[55] On July 31, 2015, the provisions in Wide Voice's FCC Tariff No. 3 amended through Transmittal No. 5 became effective.[56]

37. On July 14, 2017, Wide Voice amended its FCC Tariff No. 3 (Transmittal No. 7) to, *inter alia*, insert § 3.6.4 defining the terminating Tandem-Switched Transport rate schedules and insert an "Affil PCL" rate in §§ 3.8, 3.9, and 3.10.[57] On July 29, 2017, the provisions in Wide Voice's FCC Tariff No. 3 amended through Transmittal No. 7 became effective.[58]

38. Wide Voice amended its tariff through a transmittal (Transmittal No. 8) issued July 18, 2018, which went into effect on August 2, 2018.[59]

---

¶ 28 (a tariff that does not comply with § 61.26 "violates the Commission's Rules and renders the prohibited tariff void *ab initio*.").

[53] *Aureon Recon. Order* ¶ 15.

[54] *Id.* ¶ 17.

[55] Ex. 3 at VZ_0000050-VZ_0000096.

[56] *Id.*

[57] Ex. 4 at VZ_0000097-VZ_0000166.

[58] *Id.*

[59] Ex. 5 at VZ_0000167-VZ_0000185.

39. Section 3.6.4 in Wide Voice's FCC Tariff No. 3 establishes two Tandem-Switched Transport rates, which Wide Voice refers to as "Standard" rates and "Affil PCL" rates.[60]

40. Section 3.6.4 reads in full:

> The terminating Tandem-Switched Transport rate schedules are bifurcated into "Standard" and "Affil PCL" rates. *The Affil PCL terminating Tandem-Switched Transport rates apply to terminating traffic traversing a Company Access Tandem switch when the terminating carrier is a Company-affiliated price cap carrier.* All other terminating Tandem-Switched Transport traffic is subject to the Standard terminating Tandem-Switched Transport rates.[61]

41. Wide Voice's FCC Tariff No. 3 set the "Affil PCL" rate at or below $0.0007 beginning July 29, 2017, and then at $0 beginning August 2, 2018, in accordance with § 51.907(g)(2) and (h).[62] Wide Voice did this by setting its "Terminating – Affil PCL" tandem switching rate to $0.0007 per minute (July 29, 2017) or $0 per minute (August 2, 2018), and the various other terminating switching rate elements in its rate schedule to zero.

42. The second sentence of § 3.6.4 in Wide Voice's FCC Tariff No. 3 limits the "Affil PCL" rate to traffic "traversing a [Wide Voice] Access Tandem switch when the terminating carrier is a [Wide Voice]-affiliated price cap carrier."[63]

43. However, there are no Wide Voice-affiliated price cap carriers; that is a null set.[64] Wide Voice's FCC Tariff No. 3 therefore purports ***never*** to require Wide Voice to bill the "Affil PCL" rate. Instead, Wide Voice claims that the Commission's rules and its tariff grant it the

---

[60] Ex. 8, Wide Voice FCC Tariff No. 3, § 3.6.4 (VZ_0000287).

[61] *Id.* (emphasis added; footnote omitted).

[62] *Id.* §§ 3.8, 3.9, 3.10 (VZ_0000291-VZ_0000306).

[63] *Id.* § 3.6.4 (VZ_0000287).

[64] Morgan Decl. ¶ 6.

right to charge the much higher "Standard" rates for ***all*** traffic traversing both Wide Voice tandem and end office switches, even though price cap LECs now charge $0 for identical traffic.

44. In billing its "Standard" rates, set forth in §§ 3.8-3.10 of Wide Voice's tariff, Wide Voice bills composite rates that range from $0.001039 to $0.03993227 per minute.[65]

45. Wide Voice's tariff asserts that both the "Affil PCL" rate elements and the "Standard" rate elements are benchmarked to the relevant price cap ILEC.[66]

46. In addition, since July 2015, Wide Voice's tariff has contained dispute resolution provisions that the Commission already had adjudicated as unlawful in 2011.[67]

47. *First*, § 2.10.4(A) of Wide Voice's tariff provides:

> All bills are presumed accurate, and shall be binding on the Customer unless written notice of a good faith dispute is received by the Company. For the purposes of this Section, "notice of a good faith dispute" is defined as written notice to the Company's contact within a reasonable period of time after the invoice has been issued, containing sufficient documentation to investigate the dispute, including the account number under which the bill has been rendered, the date of the bill, and the specific items on the bill being disputed. A separate letter of dispute must be submitted for each and every individual bill that the Customer wishes to dispute.

48. *Second*, § 2.10.4(B) of Wide Voice's tariff provides:

> Prior to or at the time of submitting a good faith dispute, Customer shall tender payment for any undisputed amounts, as well as payment for any disputed charges relating to traffic in which the Customer transmitted an interstate telecommunications to the Company's network.

---

[65] Wide Voice's tariff also has Common Trunk Port, Local Switching, Carrier Common Line, and Interconnection Charge rate elements. For terminating traffic, however, each of these elements has been set at $0 since July 29, 2017. Ex. 8, Wide Voice FCC Tariff No. 3, § 3.8 (VZ_0000291-VZ_0000302).

[66] *Id.* § 3.6.4 n.1 (VZ_0000287) ("Affil PCL terminating Tandem-Switched Transport rates are benchmarked to the price cap LEC rates which are subject to the step down specified in Commission Rules 51.907(g)(2) and 51.907(g)."); *id.* § 3.6.4 n.2 (VZ_0000287) ("Standard terminating Tandem-Switched Transport rates are benchmarked to the price cap LEC rates which are not subject to the step down specified in Commission Rules 51.907(g)(2) and 51.907(g).").

[67] *See id.* § 2.10.4(A)-(B) (VZ_0000248-VZ_0000249).

### D. The Parties' Dispute

49. In November 2018, Verizon conducted an internal audit of Wide Voice's charges based on suspicious billing patterns.[68] During that audit process, Verizon discovered that Wide Voice was improperly billing Verizon at the "Standard" Tandem-Switched Transport rate elements for terminating traffic that, as of July 29, 2017, should have been billed at the "Affil PCL" rates.[69]

50. On November 14, 2018, Verizon reached out to Wide Voice concerning the terminating charges where "Wide Voice owns the end office and tandem switching equipment" but "isn't following step 6 or step 7 of the ICC reform rules. Please explain."[70] Wide Voice's CEO responded that "Wide Voice is billing precisely in accordance with our tariffs" and indicated that Wide Voice believed that only price cap carriers — not CLECs — are subject to Step Six and Step Seven in § 51.907 and the transition to bill-and-keep.[71]

51. On December 18, 2018, Verizon sent a dispute notification to Wide Voice.[72] Verizon's dispute notification letter explained, *inter alia*, that Wide Voice's "tariff is not valid because it does not comply with the FCC's intercarrier compensation and benchmark rules," including §§ 51.907 and 61.26, and that Wide Voice should instead be billing the

---

[68] Morgan Decl. ¶ 2.

[69] *Id.* ¶ 3. Verizon has also raised other disputes with Wide Voice's billing practices not at issue in this Formal Complaint. Among them, Wide Voice has improperly billed Verizon terminating rates for calls that Wide Voice does not, in fact, terminate (but rather delivers to a two-stage calling platform). Ex. 2 at VZ_0000038; *see Broadvox-CLEC, LLC v. AT&T Corp.*, 184 F. Supp. 3d 192, 216 (D. Md. 2016) (holding that CLEC did not "terminate" two-stage calls and "[wa]s not entitled to switched access charges on th[o]se calls"; citing and discussing Commission precedent).

[70] Ex. 1 at VZ_0000005.

[71] *Id.* at VZ_0000004.

[72] Ex. 2 at VZ_0000038.

step-down rates for traffic "traversing Wide Voice's tandem and terminating to an end office of a Wide Voice affiliate within the service territory of a Price Cap ILEC."[73]

52. On December 21, 2018 and December 31, 2018, counsel for Verizon and Wide Voice exchanged additional letter correspondence about the parties' disputes.[74]

53. With Wide Voice's December 2018 invoice, Verizon began disputing and withholding payment with respect to Wide Voice's terminating charges, on a prospective basis, based on Wide Voice's failure to comply with §§ 51.907 and 61.26.[75]

54. For all of the disputed charges at issue in this Complaint, the traffic traversed a Wide Voice tandem before being routed through either Wide Voice's end office switch for delivery to Wide Voice's end-user customer or through an end office switch owned by a LEC that is a Wide Voice affiliate before being routed to that LEC's end-user customer.[76] These affiliated LECs include Native American Telecom, LLC and Native American Telecom–Pine Ridge, LLC (together, "Native American Telecom").

55. The call flow for the traffic at issue in this Complaint is therefore as follows:[77]

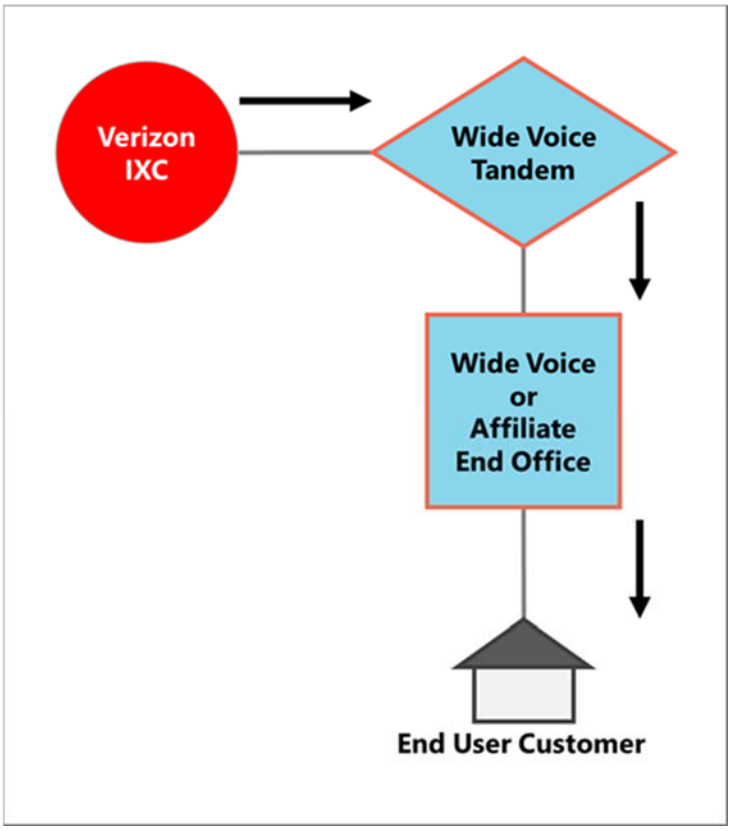
[73] *Id.*

[74] *Id.* at VZ_0000041-VZ_0000049.

[75] Morgan Decl. ¶ 4.

[76] *Id.* ¶ 5.

[77] *Id.*




56. On January 30, 2019, Verizon notified the Enforcement Bureau that it intended to file a Formal Complaint pursuant to § 208(b)(1).[78]

57. On April 10, 2019, Wide Voice submitted a proposed tariff filing that, *inter alia*, added two argumentative paragraphs and an illustrative chart to § 3.6.4, which attempted to justify Wide Voice's claim that Wide Voice, as a CLEC, is never subject to Step Seven.[79] Wide Voice's tariff filing also sought to impose additional limitations on the ability of customers to dispute Wide Voice's charges.[80] After Verizon and AT&T challenged the tariff filing as

[78] Ex. 2 at VZ_0000034-VZ_0000049.

[79] Ex. 6 at VZ_0000194-VZ_0000196.

[80] *Id.* at VZ_0000189-VZ_0000190.

unlawful in multiple respects pursuant to 47 C.F.R. § 1.773(a),[81] Wide Voice withdrew the tariff filing.[82]

## II. WIDE VOICE'S TARIFF VIOLATES THE COMMISSION'S STEP-DOWN AND BENCHMARK RULES

58. Section 3.6.4 of Wide Voice's FCC Tariff No. 3 is illegal, unlawful, and void *ab initio* because it purports to authorize Wide Voice to charge terminating switched access rates that are prohibited by §§ 51.907 and 61.26.

59. Wide Voice claims that the Step Six and Step Seven step-downs in § 51.907 only govern price cap LECs, not CLECs.[83] But that is wrong. The step-down rates — and the current bill-and-keep regime — apply to CLECs through the CLEC Benchmark Rule, as the Commission held in paragraph 807 of the *Connect America Fund Order* and codified in § 51.911(c). Therefore, to comply with §§ 51.907 and 61.26, Wide Voice's FCC Tariff No. 3 should state that the "Affil PCL" rate elements apply to terminating traffic traversing a Company Access Tandem switch when the terminating carrier is the Company or a Company-affiliated LEC.

60. Because Wide Voice's FCC Tariff No. 3 purports to authorize it to charge rates prohibited by §§ 51.907 and 61.26, it is void *ab initio*.

61. In addition, the provisions of Wide Voice's FCC Tariff No. 3 in effect prior to July 29, 2017 governing terminating switched access charges became unlawful no later than July

[81] Ex. 9 at VZ_0000333-VZ_0000363.

[82] Ex. 7 at VZ_0000197-VZ_0000207.

[83] Ex. 1 at VZ_0000003-VZ_0000004; Ex. 2 at VZ_0000042-VZ_0000043.

31, 2017 — which was the last possible day for a CLEC tariff complying with Step Six to take effect.[84]

62. In the alternative, to the extent the Commission finds that § 3.6.4 is ambiguous, that ambiguity must be construed against Wide Voice as the drafter of the tariff. As the Commission has repeatedly explained, "[i]t is well-established . . . that any ambiguity in a tariff is construed against the party who filed the tariff"[85] — in this case, Wide Voice.

63. Construing any ambiguity against Wide Voice, § 3.6.4 should be read to implement Step Six and Step Seven and thereby require Wide Voice to bill the tariffed "Affil PCL" rates for terminating traffic that traverses both a Wide Voice tandem switch and a Wide Voice (or Wide Voice affiliate) end office switch.

64. So construed, Wide Voice has violated and continues to violate its tariff by billing Verizon "Standard" rates for terminating traffic that should have been billed at the "Affil PCL" rates[86] — that is, the traffic that traversed Wide Voice's tandem and was delivered to a Wide Voice end office or to a Native American Telecom end office.

---

[84] *See* 47 U.S.C. § 51.911(c) (requiring CLECs to comply with the step downs beginning July 1, 2013); *Connect America Fund Order* ¶ 807 (giving CLECs an extra 15 days to make its annual filing complying with the step downs).

[85] Memorandum Opinion and Order, *AT&T Corp. v. YMax Commc'ns Corp.*, 26 FCC Rcd 5742, ¶ 33 (2011) ("*YMax Order*"); *see also*, *e.g.*, *Associated Press v. FCC*, 452 F.2d 1290, 1299 (D.C. Cir. 1971) ("[I]t is well settled that tariff provisions are to be construed strictly against the carrier, and any doubt resolved in favor of the customer."); *accord Norfolk & W. Ry. Co. v. B.I. Holser & Co.*, 629 F.2d 486, 488 (7th Cir. 1980) ("[T]ariff[s] should be construed strictly against the carrier since the carrier drafted the tariff; and consequently, any ambiguity or doubt should be decided in favor of the [customer]."); *Verizon Va., LLC v. XO Commc'ns, LLC*, 144 F. Supp. 3d 850, 858 (E.D. Va. 2015).

[86] *YMax Order* ¶¶ 34, 52.

## III. WIDE VOICE'S TARIFF INCLUDES TWO UNLAWFUL DISPUTE RESOLUTION PROVISIONS THAT ARE VOID *AB INITIO*

65. In addition to purporting to authorize Wide Voice to charge unlawful rates, as described above, Wide Voice's FCC Tariff No. 3 contains two other provisions that are unlawful and void *ab initio*.

66. *First*, the Commission held in 2011 that customers have a two-year window to dispute tariffed charges, *see* 47 U.S.C. § 415, and that carriers act unjustly and unreasonably, in violation of § 201, when they file tariff provisions that purport to shorten that period unilaterally.[87] The D.C. Circuit affirmed that decision in 2013.[88]

67. Nevertheless, in § 2.10.4(A) — filed in July 2015 — Wide Voice states that its bills "shall be binding on the Customer unless written notice of a good faith dispute is received by the Company." That provision goes on to define "'notice of a good faith dispute' . . . as written notice to the Company's contact within a reasonable period of time after the invoice has been issued."

68. Although the tariff does not define a "reasonable period of time" — and for that reason violates 47 C.F.R. § 61.2(a), which requires "all tariff[s] . . . [to] contain clear and explicit explanatory statements" — to the extent a "reasonable period of time" is less than two years, § 2.10.4(A) is unlawful as it purports to make Wide Voice's invoices "binding" before the expiration of the two-year statute of limitations in § 415.

69. *Second*, the Commission also held in 2011 that carriers act unjustly and unreasonably, in violation of § 201, when they file tariff provisions that purport to require carriers to pay amounts billed in order to raise disputes.

---

[87] *Northern Valley Order* ¶ 14.

[88] *See N. Valley Commc'ns, LLC v. FCC*, 717 F.3d 1017, 1019-20 (D.C. Cir. 2013).

70. Nevertheless, in § 2.10.4(B) — filed in July 2015 — Wide Voice requires that, "[p]rior to or at the time of submitting a good faith dispute, Customer shall tender payment for any . . . disputed charges relating to traffic in which the Customer transmitted an interstate telecommunications to the Company's network."

71. This provision explicitly purports to require a customer that raises a "good faith dispute" to "pay[ ] . . . any disputed charges," no different from the provision the Commission invalidated in the *Northern Valley Order*. The "relating to" clause does not save § 2.10.4(B) because, to the extent that clause has a discernable meaning, "traffic in which the Customer transmitted an interstate telecommunications to the Company's network" encompasses all of the terminating switched access traffic a customer delivers to Wide Voice that could be subject to its federal tariff (*i.e.*, interstate switched access traffic). The *Northern Valley Order* was not limited to originating switched access charges.

72. Section 2.10.4(A) and (B) are materially indistinguishable from the tariff provisions the Commission invalidated in the *Northern Valley Order*.

73. Accordingly, when Wide Voice added these provisions to its tariff in July 2015, it was on notice that the provisions were unlawful. As the Commission held in analogous circumstances, "nothing in the language of Section 204(a)(3) suggests that a [provision] that was prohibited by the Commission's [decisions] could be one that a carrier 'may' file."[89] Instead, a tariff "filing that contains [provisions] that the carrier is not permitted to [file] does not even meet the preliminary standard for a legal tariff filing, and therefore cannot become a 'deemed lawful' tariff by operation of Section 204(a)(3)."[90]

[89] *Aureon Recon. Order* ¶ 14.

[90] *Id.* ¶ 15.

74. Wide Voice has cited tariff provisions § 2.10.4(A) and (B) as bases for denying Verizon's disputes of Wide Voice's failure to comply with §§ 51.907 and 61.26.[91]

**COUNT I**
**(Section 201, 47 U.S.C. § 201,**
**Unjust and Unreasonable Practice)**

75. Verizon repeats and realleges each and every allegation in paragraphs 1 through 74 of this Formal Complaint as if set forth fully herein.

76. Under § 201(b), "[a]ll charges, practices, classifications, and regulations for and in connection with [interstate or foreign] communication service, shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is declared to be unlawful." 47 U.S.C. § 201(b).

77. Wide Voice's tariff is unjust and unreasonable, and thus illegal, unlawful, and void *ab initio*, in the following ways:

78. *First*, Wide Voice filed a tariff that contains rates prohibited by the Commission. Section 3.6.4 of Wide Voice's FCC Tariff No. 3 purports to authorize rates for tandem-switched transport that violate §§ 51.907(g)-(h), 51.911(c), and 61.26(b).

79. *Second*, Wide Voice billed Verizon under this unlawful tariff in violation of §§ 201 and 203.

80. *Third*, Wide Voice's tariff contains dispute resolution provisions that, as of the time Wide Voice filed them in 2015, had already been held unlawful under § 201. Wide Voice has relied on those dispute resolution provisions as the basis for denying Verizon's dispute.

81. Verizon seeks a judicial determination of its rights pursuant to the Commission's rules, with regard to Wide Voice's claimed entitlement to invoice and collect its federally

[91] Ex. 2 at VZ_0000041-VZ_0000042.

tariffed switched access rates. Specifically, Verizon seeks a declaration that § 51.907 applies to Wide Voice, as a CLEC, and that Wide Voice's tariff purporting to authorize it to charge rates prohibited by §§ 51.907 and 61.26 is void *ab initio*.

**COUNT II**
**(Sections 201 and 203, 47 U.S.C. §§ 201(b), 203(c))**

82. Verizon realleges paragraphs 1 through 74.

83. In the alternative to Count I, Wide Voice has violated § 203(c), which provides that "[n]o carrier, unless otherwise provided by or under authority of this chapter, shall engage or participate in such communication[s] unless schedules have been filed and published in accordance with the provisions of this chapter . . . ; and no carrier shall . . . employ or enforce any classifications, regulations, or practices affecting such charges, except as specified in such schedule." 47 U.S.C. § 203(c).

84. If § 3.6.4 of Wide Voice's tariff is construed to require Wide Voice to charge the Step Six and Step Seven rates in accordance with § 51.907, Wide Voice has violated §§ 201(b) and 203(c) of the Act by charging Verizon switched access rates that its tariff does not authorize.[92]

85. The Commission should declare that Wide Voice is not entitled to bill or collect charges not authorized by its federal tariff.

**COUNT III**
**(Declaratory Ruling)**

86. Verizon realleges paragraphs 1 through 74.

87. Wide Voice argues that Step Six and Step Seven do not apply to it because it is not a price cap ILEC. Accordingly, Wide Voice continues to invoice Verizon for terminating

[92] *YMax Order* ¶¶ 34, 52.

switched access traffic at rates above the Step Six and Step Seven rates and to assert an entitlement to collect the amounts invoiced.

88. A declaration from the Commission is therefore needed to terminate a controversy and remove uncertainty.[93]

89. Verizon seeks a determination of its rights pursuant to the Commission's rules[94] with regard to Wide Voice's claimed entitlement to invoice and collect its federally tariffed switched access rates. Specifically, Verizon seeks a declaration that Step Six and Step Seven apply to Wide Voice, a CLEC that benchmarks to the tariffs of price cap ILECs, and not only to those price cap ILECs themselves. Accordingly, Verizon seeks a declaration that Wide Voice must amend its tariff to comply with Step Six and Step Seven immediately.

## PRAYER FOR RELIEF

Wherefore, and pursuant to § 1.722(f), Verizon requests that the Commission:

(a) Find that Defendant Wide Voice has violated §§ 201 and 203 of the Act, 47 U.S.C. §§ 201, 203;

(b) Declare that §§ 3.6.4, 2.10.4(A), and 2.10.4(B) of Wide Voice's FCC Tariff No. 3 are void *ab initio*;

(c) Declare that Step Six and Step Seven apply to a CLEC, like Wide Voice, that routes terminating traffic through its end office (or the end office of an affiliate) and a tandem that it owns;

(d) Declare that Wide Voice must file a conforming tariff immediately;

(e) Award Verizon damages in a separate and subsequent proceeding;

(f) Award Verizon such other relief as the Commission may deem just and proper.

[93] 47 C.F.R. § 1.2(a).

[94] *Id.*; 5 U.S.C. § 554.

Respectfully submitted,

/s/ *Curtis L. Groves*
Curtis L. Groves
VERIZON
1300 I Street, N.W., Suite 500 East
Washington, D.C. 20005
(202) 515-2179

Scott H. Angstreich
Joshua Hafenbrack
Sean M. Nadel
KELLOGG, HANSEN, TODD, FIGEL
& FREDERICK, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

*Counsel for MCI Communications Services, Inc.*

June 14, 2019

**WRITTEN VERIFICATION**

Pursuant to 47 C.F.R. § 1.721(m), I, Curtis L. Groves, have read Verizon's submissions and certify that this Formal Complaint and supporting materials are well grounded in fact, warranted under existing law, and have not been filed for any improper purpose.

/s/ *Curtis L. Groves*
Curtis L. Groves
VERIZON
1300 I Street, N.W., Suite 500 East
Washington, D.C. 20005
(202) 515-2179

June 14, 2019

**CERTIFICATE OF FEE PAYMENT**

I, Curtis L. Groves, hereby declare, under penalty of perjury, that (1) Verizon paid the $235 filing fee for the Formal Complaint (pursuant to Commission Rule 1.1106, 47 C.F.R. § 1.1106) by means of the Commission's electronic payment system. Verizon's FCC Registration Number (FRN) is 0004335592.

/s/ *Curtis L. Groves*

Curtis L. Groves
VERIZON
1300 I Street, N.W., Suite 500 East
Washington, D.C. 20005
(202) 515-2179

June 14, 2019

## CERTIFICATE OF SERVICE

I, Curtis L. Groves, hereby certify that, on June 14, 2019, I caused a copy of the foregoing Formal Complaint, as well as all accompanying materials, to be served on the following individual:

Lauren J. Coppola
Robins Kaplan LLP
800 Boylston Street, Suite 2500
Boston, MA 02199
LCoppola@RobinsKaplan.com
(617) 267-2300

/s/ *Curtis L. Groves*
Curtis L. Groves
VERIZON
1300 I Street, N.W., Suite 500 East
Washington, D.C. 20005
(202) 515-2179

**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**

| | |
|---|---|
| **In the Matter of**<br><br>**MCI COMMUNICATIONS SERVICES, INC.,**<br><br>***Complainant*,**<br><br>**v.**<br><br>**WIDE VOICE, LLC,**<br><br>***Defendant*.** | **Proceeding Number 19-121**<br>**Bureau ID Number**<br>**EB-19-MD-003** |

# LEGAL ANALYSIS IN SUPPORT OF FORMAL COMPLAINT OF MCI COMMUNICATIONS SERVICES, INC.


Scott H. Angstreich
Joshua Hafenbrack
Sean Nadel
KELLOGG, HANSEN, TODD, FIGEL & FREDERICK, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Curtis L. Groves
VERIZON
1300 I Street, N.W., Suite 500 East
Washington, D.C. 20005
(202) 515-2179

*Counsel for MCI Communications Services, Inc.*


June 14, 2019

## TABLE OF CONTENTS

Page

## TABLE OF AUTHORITIES

Page

### CASES



### STATUTES AND REGULATIONS

Communications Act of 1934, 47 U.S.C. § 151 *et seq.*:

47 C.F.R.:



**ADMINISTRATIVE MATERIALS**

**OTHER MATERIALS**

## INTRODUCTION

This dispute concerns Wide Voice, LLC's ("Wide Voice") unlawful tariff — and billing pursuant to that tariff — with respect to terminating switched access traffic. Specifically, Wide Voice has violated 47 C.F.R. §§ 51.907 and 61.26(b) by failing to implement the final two stages of the seven-step Commission-mandated transition to bill-and-keep for terminating switched access charges. In addition, Wide Voice has attempted to protect its unlawful billing practices through tariffed dispute resolution provisions that the Commission had already held are unlawful before Wide Voice added them to its tariff.

*First*, Wide Voice contends that, because *it* is not a price cap incumbent local exchange carrier ("ILEC"), Wide Voice can still charge its various standard tandem switched access rate elements, which total as much as $0.03993227 per minute — rather than $0.0007 per minute as of July 29, 2017, and $0 per minute as of August 2, 2018 — for terminating switched access calls that are routed through both a Wide Voice tandem switch and a Wide Voice (or Wide Voice CLEC affiliate) end office switch. Wide Voice is wrong: the competitive local exchange carrier ("CLEC") Benchmark Rule[1] extends those maximum rates for terminating switched access charges to CLECs, like Wide Voice, that operate both end office and tandem switches. Wide Voice's tariff is therefore unlawful to the extent that, in § 3.6.4, it authorizes Wide Voice to bill the higher standard tandem switching rates for such traffic. And, insofar as the Commission finds that tariff ambiguous, it should construe it against Wide Voice, find that it properly

[1] 47 C.F.R. § 61.26(b)(1).

implements the sixth[2] and seventh[3] steps of the transition, and find that Wide Voice violated its tariff by billing Verizon at rates above $0.0007 and $0 per minute.

*Second*, in response to Verizon's disputes, Wide Voice has defended its conduct by relying on two unlawful dispute resolution provisions. The first provision — § 2.10.4(A) of its tariff — purports to make Wide Voice's invoices "binding" on a customer unless Wide Voice receives written disputes within a "reasonable period of time."[4] The second provision — § 2.10.4(B) — purports to require a customer, when it "submit[s] a good faith dispute," to "tender payment . . . for any disputed charges."[5] Even though the Commission in 2011 held that such tariff provisions are unjust and unreasonable,[6] Wide Voice added them to its tariff in July 2015.

The Commission should find that Wide Voice has violated 47 U.S.C. § 201 and declare illegal, unlawful, and void *ab initio* §§ 2.10.4(A), 2.10.4(B), and 3.6.4 of Wide Voice's FCC Tariff No. 3. The Commission should find further that Wide Voice violated 47 U.S.C. § 203 by billing Verizon pursuant to that unlawful tariff and by collecting amounts from Verizon. In the alternative, with respect specifically to § 3.6.4, the Commission should construe any ambiguities in that section against Wide Voice and find that Wide Voice violated § 203 by billing Verizon for terminating switched access traffic that routed through a Wide Voice tandem switch and a Wide Voice (or Wide Voice CLEC affiliate) end office switch at per-minute rates in excess of

---

[2] *Id.* § 51.907(g)(2).

[3] *Id.* § 51.907(h).

[4] Ex. 8, Wide Voice FCC Tariff No. 3, § 2.10.4(A) (VZ_0000248).

[5] *Id.* § 2.10.4(B) (VZ_0000249).

[6] *See* Memorandum Opinion and Order, *Sprint Commc'ns Co. v. N. Valley Commc'ns, LLC*, 26 FCC Rcd 10780, ¶ 14 (2011) ("*Northern Valley Order*").

$0.0007 (as of July 29, 2017) and $0 (as of August 2, 2018) and collecting such amounts from Verizon. Regardless of how it construes § 3.6.4, the Commission should enter a declaratory ruling prohibiting Wide Voice prospectively from billing any amounts for switched access traffic terminated through both a Wide Voice tandem switch and Wide Voice (or Wide Voice CLEC affiliate) end office switch and ordering it promptly to amend its tariff to bring it into compliance with the Commission's rules. Finally, the Commission should award monetary damages to Verizon for amounts that Wide Voice unlawfully billed and collected.

## BACKGROUND

### A. *The CAF Order* and the Transition to Bill-and-Keep

As the Commission has explained, in the 2011 *Connect America Fund Order* ("*CAF Order*"),[7] "the Commission comprehensively reformed its intercarrier compensation regime and adopted a timeline for transitioning to a uniform national 'bill-and-keep' framework for telecommunications traffic exchanged with local exchange carriers (LECs)."[8] "Bill-and-keep brings market discipline to intercarrier compensation because it ensures that the customer who chooses a network pays the network for the services the subscriber receives."[9]

The *CAF Order* adopted a seven-year transition to bill-and-keep for terminating switched access services, which was "where the most acute intercarrier compensation problems, such as

[7] Report and Order and Further Notice of Proposed Rulemaking, *Connect America Fund*, 26 FCC Rcd 17663 (2011) ("*CAF Order*").

[8] Memorandum Opinion and Order, *Level 3 Commc'ns, LLC v. AT&T Inc.*, 33 FCC Rcd 2388, ¶ 1 (2018) ("*Level 3 Order*").

[9] *CAF Order* ¶ 742; *see also id.* ¶ 745 ("a bill-and-keep framework helps reveal the true cost of the network"); *id.* ¶ 752 (bill-and-keep "better reflects the incremental cost of termination, reducing arbitrage incentives") (footnote omitted); *id.* ¶ 756 ("Under bill-and-keep, 'success in the marketplace will reflect a carrier's ability to serve customers efficiently, rather than its ability to extract payments from other carriers.'").

arbitrage, currently arise."[10] The transition period "required price cap carriers to reduce — or 'step down' — a subset of their terminating tandem switching and transport charges in year six of the transition plan and to further reduce those same charges to zero (i.e., bill-and-keep) in year seven."[11]

Step Six is codified in § 51.907(g)(2), which provides: "Each Price Cap Carrier shall establish, for interstate and intrastate terminating traffic traversing a tandem switch that the terminating carrier or its affiliates owns, Tandem-Switched Transport Access Service rates no greater than $0.0007 per minute."[12] Under Step Six, when a price cap LEC provides end office switching on a call routed through a tandem that it owns, or that its affiliate owns, the price cap LEC cannot charge a rate higher than $0.0007.[13] The word "affiliate" is defined in the Communications Act as "a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person."[14] The term "own" means "to own an equity interest (or the equivalent thereof) of more than 10 percent."[15]

Step Seven is codified in § 51.907(h), which provides: "Beginning July 1, 2018, notwithstanding any other provision of the Commission's rules, each Price Cap carrier shall, in accordance with bill-and-keep, as defined in § 51.713, revise and refile its interstate switched

---

[10] *Id.* ¶ 800; *see also* Memorandum Opinion and Order, *Iowa Network Access Div., Tariff F.C.C. No. 1*, 33 FCC Rcd 7517, ¶ 6 (2018) (noting that *CAF Order* "required LECs to adjust, over a period of years, many of their terminating switched access charges, effective on July 1 of each of those years, with the ultimate goal of transitioning to a bill-and-keep regime").

[11] *Level 3 Order* ¶ 2.

[12] 47 C.F.R. § 51.907(g)(2).

[13] *Level 3 Order* ¶¶ 2, 11.

[14] 47 U.S.C. § 153(2).

[15] *Id.* The Commission did not adopt a separate definition of "affiliate" for purposes of § 51.907. *See* 47 C.F.R. § 51.903.

access tariffs and any state tariffs to remove any intercarrier charges applicable to terminating tandem-switched access service traversing a tandem switch that the terminating carrier or its affiliate owns."[16] Under Step Seven, when a price cap LEC provides end office switching on a call routed through a tandem that it owns, or that its affiliate owns, the price cap LEC cannot charge any rate — that is, the applicable rate is $0.[17]

### B. The CLEC Benchmark Rule

Step Six and Step Seven in § 51.907 bind a CLEC like Wide Voice, which benchmarks its rates under § 61.26 to those of a price cap ILEC.

In the *CAF Order*, the Commission explained that the step-down rates and transition to bill-and-keep apply to "Price Cap Carriers and CLECs that benchmark access rates to price cap carriers,"[18] and recognized that its intercarrier compensation reforms "will generally apply to competitive LECs via the CLEC benchmarking rule," which is codified in § 61.26.[19] Section 61.26 — or the "CLEC Benchmark Rule" — provides that "a CLEC shall not file a tariff for its interstate switched exchange access services that prices those services above" the "rate charged for such services by the competing ILEC."[20]

Further, the *CAF Order* promulgated § 51.911(c), which provides that, beginning July 1, 2013, "all Competitive Local Exchange Carrier Access Reciprocal Compensation rates for switched exchange access services subject to this subpart shall be no higher than the Access Reciprocal Compensation rates charged by the competing incumbent local exchange carrier, in

---

[16] 47 C.F.R. § 51.907(h).

[17] *Level 3 Order* ¶ 2.

[18] *CAF Order* ¶ 801 fig. 9.

[19] *Id.* ¶ 807.

[20] 47 C.F.R. § 61.26(b)(1); *see also* Seventh Report and Order and Further Notice of Proposed Rulemaking, *Access Charge Reform*, 16 FCC Rcd 9923 (2001).

accordance with the same procedures specified in § 61.26." The Commission gave CLECs an "extra 15 days from the effective date of the tariff to which a competitive LEC is benchmarking to make its filing(s)."[21]

As the Commission has explained, a tariff "that includes rates in excess of the applicable benchmark in Section 61.26 is subject to mandatory detariffing" — that is, the "carrier is *prohibited* from filing a tariff with rates above the benchmark."[22] Under mandatory detariffing, if a CLEC files a tariff that violates § 61.26, that tariff is void *ab initio* and never deemed lawful under 47 U.S.C. § 204(a)(3).[23]

### C. Wide Voice's Tariff

In July 2015, Wide Voice added two dispute resolution provisions to its federal tariff (FCC Tariff No. 3). *First*, Wide Voice amended its tariff to add § 2.10.4(A), which provides:

> All bills are presumed accurate, and shall be binding on the Customer unless written notice of a good faith dispute is received by the Company. For the purposes of this Section, "notice of a good faith dispute" is defined as written notice to the Company's contact within a reasonable period of time after the invoice has been issued, containing sufficient documentation to investigate the dispute, including the account number under which the bill has been rendered, the date of the bill, and the specific items on the bill being disputed. A separate letter of dispute must be submitted for each and every individual bill that the Customer wishes to dispute.

*Second*, Wide Voice amended its tariff to add § 2.10.4(B), which provides:

> Prior to or at the time of submitting a good faith dispute, Customer shall tender payment for any undisputed amounts, as well as payment for any disputed charges relating to traffic in which the Customer transmitted an interstate telecommunications to the Company's network.

---

[21] *CAF Order* ¶ 807; *see also id.* ¶ 808 (considering and rejecting separate transition for CLECs).

[22] Memorandum Opinion and Order, *AT&T Servs., Inc. v. Great Lakes Comnet, Inc.*, 30 FCC Rcd 2586, ¶ 28 (2015) ("*Great Lakes Order*") (emphasis added).

[23] Memorandum Opinion and Order, *AT&T Corp. v. Iowa Network Servs., Inc. d/b/a Aureon Network Servs.*, 32 FCC Rcd 9677, ¶ 24 (2017) ("*Aureon Order*").

In July 2017, Wide Voice again amended its federal tariff to, *inter alia*, insert a provision — § 3.6.4 — defining the terminating Tandem-Switched Transport rate schedules and creating "Affil PCL" rates, ostensibly to comply with § 51.907 and the Step Six and Step Seven step-downs.[24] Wide Voice's tariff set the "Affil PCL" rate elements so that they would total $0.0007 per minute beginning July 29, 2017, and then so that they would total $0 beginning August 2, 2018.[25] The "Standard" Tandem-Switched Transport composite rates billed by Wide Voice ranged from $0.001039 to $0.03993227 per minute.[26]

Section 3.6.4 then provided the following definition for the traffic subject to the step-down "Affil PCL" rate elements:

> The terminating Tandem-Switched Transport rate schedules are bifurcated into "Standard" and "Affil PCL" rates. The Affil PCL terminating Tandem-Switched Transport rates apply to terminating traffic traversing a Company Access Tandem switch when the terminating carrier is a Company-affiliated price cap carrier. All other terminating Tandem-Switched Transport traffic is subject to the Standard terminating Tandem-Switched Transport rates.[27]

**D. The Parties' Dispute**

In November 2018, Verizon conducted an internal audit of Wide Voice's charges based on suspicious billing patterns.[28] During that audit process, Verizon discovered that Wide Voice was billing Verizon at the "Standard" tandem terminating rate elements — for traffic post-dating its July 29, 2017 tariff amendment — even with respect to traffic that traversed a Wide Voice tandem and Wide Voice (or Wide Voice affiliate) end office switch.[29] Verizon reached out to

---

[24] Ex. 8, Wide Voice FCC Tariff No. 3, § 3.6.4 (VZ_0000287).

[25] *Id.* §§ 3.8, 3.9, 3.10 (VZ_0000291-VZ_0000306).

[26] *Id.*

[27] *Id.* § 3.6.4 (VZ_0000287) (footnote omitted).

[28] Morgan Decl. ¶ 2.

[29] *Id.* ¶ 3. Verizon has also raised other disputes with Wide Voice's billing practices not at issue in this Formal Complaint. Among them, Wide Voice has improperly billed Verizon

Wide Voice concerning those terminating charges where "Wide Voice owns the end office and tandem switching equipment" but "isn't following step 6 or step 7 of the ICC reform rules."[30] On December 18, 2018, after additional written and telephone correspondence between the parties, Verizon sent a dispute notification to Wide Voice that explained, *inter alia*, that Wide Voice's "tariff is not valid because it does not comply with the FCC's intercarrier compensation and benchmark rules," including §§ 51.907 and 61.26, and that Wide Voice should be billing the step-down rates for traffic "traversing Wide Voice's tandem and terminating to an end office of a Wide Voice affiliate within the service territory of a Price Cap ILEC."[31]

On January 30, 2019, Verizon notified the Enforcement Bureau that it intended to file a Formal Complaint pursuant to § 208(b)(1).[32]

**E. Key Facts**

The facts underlying this dispute are straightforward.

*First*, all of the traffic at issue in this Complaint (1) traversed a Wide Voice tandem (2) before being routed through a Wide Voice (or Wide Voice affiliate) end office switch (3) for delivery to Wide Voice's end-user customer.[33]

*Second*, since July 29, 2017, Wide Voice has continued to bill Verizon at its "Standard" rates — which exceed the step-down per-minute rates of $0.0007 and $0 — for all terminating

---

terminating rates for calls that Wide Voice does not, in fact, terminate (but rather delivers to a two-stage calling platform). *See Broadvox-CLEC, LLC v. AT&T Corp.*, 184 F. Supp. 3d 192, 216 (D. Md. 2016) (holding that CLEC did not "terminate" two-stage calls and "[wa]s not entitled to switched access charges on th[o]se calls"; citing and discussing Commission precedent).

[30] Ex. 1 at VZ_0000005.

[31] Ex. 2 at VZ_0000038.

[32] *Id.* at VZ_0000034-VZ_0000049.

[33] Morgan Decl. ¶ 5.

switched-access services, on the grounds that § 51.907 and the Step Six and Step Seven step-down rates bind only price cap ILECs, not CLECs.[34]

*Third*, there are no price cap carriers affiliated with Wide Voice.[35]

*Fourth*, Native American Telecom, LLC and Native American Telecom – Pine Ridge, LLC (together, "Native American Telecom") are "affiliates" of Wide Voice on the basis of shared ownership and/or control. Accordingly, traffic that (1) traversed a Wide Voice tandem, (2) before being routed through a Native American Telecom end office switch (3) for delivery to Native American Telecom's end-user customer is subject to the Commission's step-down requirements.

## ARGUMENT

### I. WIDE VOICE'S TARIFF VIOLATES THE COMMISSION'S STEP-DOWN AND BENCHMARK RULES

Section 3.6.4 of Wide Voice's tariff is unlawful because it purports to authorize Wide Voice to charge terminating switched access rates that are prohibited by §§ 51.907 and 61.26. Section 3.6.4 is therefore void *ab initio* and the Commission should declare it is unlawful.

**A.** To begin, Step Six (as codified in § 51.907(g)) establishes that, for terminating traffic traversing a tandem switch that the terminating carrier or its affiliate owns, price cap carriers can charge rates "no greater than $0.0007 per minute" as of July 29, 2017.[36] And, under Step Seven, § 51.907(h) provides that, as of August 2, 2018, a price cap ILEC cannot charge any rate for such traffic — that is, the applicable rate is $0.[37]

---

[34] *Id.* ¶ 3.

[35] *Id.* ¶ 6.

[36] *Level 3 Order* ¶ 2.

[37] *Id.*

Wide Voice argues that only price cap LECs — not CLECs — are subject to the rates provided in § 51.907(g) and (h). But that is incorrect. The Step Six and Step Seven step-downs bind Wide Voice through the CLEC Benchmark Rule, which is codified in § 61.26 and provides that "a CLEC shall not file a tariff for its interstate switched exchange access services that prices those services above" the "rate charged for such services by the competing ILEC."[38] The syllogism is straightforward: Because ILECs are limited to charging terminating rates of $0.0007 (beginning July 29, 2017) and $0 (beginning in August 2, 2018), Wide Voice, under the CLEC Benchmark Rule, "shall not file a tariff" with terminating rates exceeding those rates.

Indeed, in the *CAF Order* itself, the Commission made clear that the step-down rates apply to "**Price Cap Carriers and *CLECs that benchmark access rates to price cap carriers***"[39] and further noted that the intercarrier compensation reforms "will generally apply to competitive LECs via the CLEC benchmarking rule" reflected in § 61.26.[40] And 47 C.F.R. § 51.911(c) forecloses Wide Voice's argument that it can charge higher rates than the competing ILEC for identical terminating traffic. That provision provides that, beginning July 1, 2013, "all Competitive Local Exchange Carrier Access Reciprocal Compensation rates for switched exchange access services subject to this subpart" — which includes § 51.907(g) and (h) — "shall be no higher than the Access Reciprocal Compensation rates charged by the competing incumbent local exchange carrier, in accordance with the same procedures specified in § 61.26." In other words, for terminating traffic subject to § 51.907(g) and (h), CLECs like Wide Voice

[38] 47 C.F.R. § 61.26(b)(1).

[39] *CAF Order* ¶ 801 fig. 9 (italics added).

[40] *Id.* ¶ 807.

cannot charge higher rates than the competing ILEC (that is, $0.0007 and $0 during the Step Six and Step Seven step-downs).

Wide Voice misreads the Commission's recent *Level 3 Order* as holding that CLECs are exempt from complying with the Step Six and Step Seven step-downs. In that proceeding, Level 3 did not make any argument based on § 51.911(c) or § 61.26, nor did it raise arguments about the maximum rate AT&T's CLECs are allowed to bill. Instead, Level 3's complaint focused on calls that routed through an AT&T ILEC tandem to AT&T's *wireless* and *VoIP* affiliates.[41] The *Level 3 Order* similarly focused on the question whether the Step Six step-down applied where "the 'terminating carrier' [was] . . . a CMRS or VoIP affiliate of AT&T."[42]

Therefore, the Commission was not presented with — and therefore did not decide — the argument Verizon presents here: that § 51.911(c) and § 61.26 make a CLEC that terminates traffic at its end office subject to the Step Six (and Step Seven) step-downs when that traffic is

[41] Formal Compl. of Level 3 Communications ¶ 2, EB Docket No. 17-227, File No. EB-17-MD-003 (Sept. 12, 2017) ("By promulgating the rule in this way, the Commission ensured that calls terminated by VoIP and wireless providers, which comprise a rapidly-growing percentage of voice calls traversing Price Cap Carrier tandem switches, are part of the transition to bill-and-keep."); *see also*, *e.g.*, *id.* ¶ 3 (arguing that, by not billing the step-down rates for wireless and VoIP traffic, AT&T was charging "rates as much as two-and-a-half times the maximum rate permitted under the Commission's rules for the growing percentage of calls that terminate with an AT&T VoIP or wireless carrier, thereby perpetuating the very ICC inefficiencies that the regulation is intended to end"); *id.* ¶ 46 ("[I]t makes no difference whether an AT&T-affiliated VoIP or wireless provider is the 'terminating carrier' as long as the owner of the tandem switch is an AT&T affiliate.").

[42] *Level 3 Order* ¶ 14; *see also id.* ¶ 16 (noting that the *CAF Order* "set forth a transition to bill-and-keep for non-access reciprocal compensation for LEC-CMRS traffic" and that, if "the Commission had intended to apply Rule 51.907(g)(2) to *CMRS-terminated traffic* in the manner Level 3 advocates, the Commission would have said so explicitly in the [*CAF*] *Order* and drafted a different rule.") (emphasis added); *id.* ¶ 17 (expressing concern that Level 3's approach "would create an unlevel playing field" between "wireless or VoIP" companies that are affiliated with a LEC and those "that have no LEC affiliates"); *id.* ¶ 18 ("The Commission made it clear in the [*CAF*] *Order* and *FNPRM* that it was establishing a separate transition path for tandem services for CMRS and VoIP-terminated calls.").

routed through a CLEC tandem switch to an end office switch that the CLEC (or its CLEC affiliate) owns, as is the case with Wide Voice and Native American Telecom.[43] As Verizon has shown, it is Wide Voice's ownership of the tandem through which those calls route that brings the calls within the scope of the step-downs, allowing Wide Voice to bill no more than $0.0007 per minute or $0 for those calls.

**B.** In violation of §§ 51.907, 51.911(c), and 61.26, Wide Voice filed a tariff that purports to authorize it to charge terminating rates above the Step Six and Step Seven step-down rates. Specifically, § 3.6.4 of Wide Voice's tariff establishes two Tandem-Switched Transport rates — "Standard" rate elements and step-down "Affil PCL" rate elements — and provides that the "*Affil PCL terminating Tandem-Switched Transport rates apply to terminating traffic traversing a Company Access Tandem switch when the terminating carrier is a Company-affiliated price cap carrier.* All other terminating Tandem-Switched Transport traffic is subject to the Standard terminating Tandem-Switched Transport rates."[44]

But there are no Wide Voice-affiliated price cap carriers — that is a null set.[45] Wide Voice's tariff therefore purports ***never*** to require Wide Voice to bill the "Affil PCL" rate elements in its tariff. Instead, Wide Voice claims that the Commission's rules and its tariff grant it the right to charge the much higher "Standard" rate elements for ***all*** traffic traversing both Wide Voice tandem and Wide Voice (or Wide Voice affiliate) end office switches, even though competing ILECs now charge $0 for identical terminating traffic. That is incorrect: pursuant to

[43] Unlike Level 3, Verizon's Complaint does not involve calls delivered through a Wide Voice tandem to a CMRS or VoIP affiliate of Wide Voice.

[44] Ex. 8, Wide Voice FCC Tariff No. 3, § 3.6.4 (VZ_0000287) (emphasis added; footnote omitted).

[45] Morgan Decl. ¶ 6.

the CLEC Benchmark Rule, paragraphs 801 and 807 of the *CAF Order*, and § 51.911(c), Wide Voice cannot tariff or charge rates higher than those charged by the competing ILEC for the same type of traffic.

**C.** Because Wide Voice's tariff purports to authorize rates prohibited by §§ 51.907 and 61.26, it is unlawful and void *ab initio*. Wide Voice's tariff "includes rates in excess of the applicable benchmark in Section 61.26" and is thus "subject to mandatory detariffing" — that is, Wide Voice was "*prohibited* from filing a tariff with rates above the benchmark."[46]

The Commission has repeatedly held, as it did in the *Great Lakes Order*, that a "CLEC tariff for interstate switched access services that includes rates in excess of the applicable benchmark in Section 61.26 is subject to mandatory detariffing," which "renders the prohibited tariff void *ab initio*."[47] And most recently, in the Commission's *Aureon Order*, the Commission similarly held that a tariff that violates the detariffing prohibition was neither legal nor lawful.[48] The Commission explained, on reconsideration, that a carrier cannot file "a rate that was prohibited by the Commission's rules" — as a "filing that contains rates that the carrier is not

---

[46] *Great Lakes Order* ¶ 28 (emphasis added). Prohibiting tariffs with rates above the benchmark, as the Commission explained to the Third Circuit, "better serves the public interest by according IXCs (and, ultimately, consumers) more protection from unreasonably high interstate access rates than attempting to identify such unreasonable rates on an *ad hoc* basis after the tariffs are filed." Br. for *Amicus Curiae* FCC at 27-28, *PAETEC Commc'ns, Inc. v. MCI Commc'ns Servs., Inc.*, Nos. 11-2268 *et al.* (3d Cir. Mar. 14, 2012), https://docs.fcc.gov/public/attachments/DOC-312984A1.pdf; *see id.* at 25 ("A CLEC tariff for interstate switched access services that includes rates in excess of the benchmark in Rule 61.26 is subject to mandatory detariffing. Under that regime, a carrier is *prohibited* from filing a tariff[.]").

[47] *Great Lakes Order* ¶ 28; *see also Global NAPs, Inc. v. FCC*, 247 F.3d 252, 259-60 (D.C. Cir. 2001) ("Merely because a tariff is presumed lawful upon filing does not mean that it is lawful"; rather, "[s]uch tariffs still must comply with the applicable statutory and regulatory requirements," and "[t]hose that do not may be declared invalid."); Order, *GS Texas Ventures, LLC*, 29 FCC Rcd 10541, ¶¶ 5-6 (Pricing Pol'y Div. 2014).

[48] *Aureon Order* ¶ 24.

permitted to charge does not even meet the preliminary standard for a legal tariff filing" and "cannot become a 'deemed lawful' tariff by operation of Section 204(a)(3)."[49]

So, too, here. Because § 3.6.4 of Wide Voice's tariff purports to authorize Wide Voice to charge prohibited rates, in violation of § 61.26, that provision was neither legal nor lawful, never gained "deemed lawful" status under § 204(a)(3), and is void *ab initio*.[50]

## II. IF WIDE VOICE'S TARIFF IS AMBIGUOUS, IT SHOULD BE READ TO REQUIRE COMPLIANCE WITH § 51.907 AND THE STEP-DOWN RATES

In the alternative, to the extent the Commission finds that § 3.6.4 of Wide Voice's tariff is ambiguous, that ambiguity must be construed against Wide Voice as the drafter of the tariff. In that circumstance, the Commission should find that Wide Voice failed to comply with the terms of its tariff, in violation of 47 U.S.C. §§ 201(b) and 203(c), by charging Verizon "Standard" rate elements for terminating traffic that should have been billed at the "Affil PCL" step-down rate elements.

As the Commission and the courts have repeatedly explained, "[i]t is well-established . . . that any ambiguity in a tariff is construed against the party who filed the tariff"[51] — in this case,

---

[49] *See* Order on Reconsideration, *AT&T Corp. v. Iowa Network Servs., Inc. d/b/a Aureon Network Servs.*, 33 FCC Rcd 7964, ¶¶ 14-15 (2018) ("*Aureon Recon. Order*").

[50] The terminating switched access rates, terms, and conditions in Wide Voice's FCC Tariff No. 3 that were in effect prior to the Wide Voice tariff amendment that took effect on July 29, 2017, would have become unlawful no later than July 31, 2017, which was the last possible day for a CLEC tariff complying with Step Six to take effect. *See* 47 U.S.C. § 51.911(c) (requiring CLECs to comply with the step downs beginning July 1, 2013); *Connect America Fund Order* ¶ 807 (giving CLECs an extra 15 days to make its annual filing complying with the step downs). Therefore, the conclusion that Wide Voice's July 14, 2017 and July 18, 2018 tariff amendments were void *ab initio* because they failed properly to implement Step Six and Step Seven means that Wide Voice had no lawful terminating switched access rates for tandem-switched traffic delivered to a Wide Voice (or Wide Voice CLEC affiliate) end office in effect.

[51] Memorandum Opinion and Order, *AT&T Corp. v. YMax Commc'ns Corp.*, 26 FCC Rcd 5742, ¶ 33 (2011) ("*YMax Order*"); *see also*, *e.g.*, *Associated Press v. FCC*, 452 F.2d 1290, 1299 (D.C. Cir. 1971) ("[I]t is well settled that tariff provisions are to be construed strictly

Wide Voice. "[T]ariff[s] should be construed strictly against the carrier since the carrier drafted the tariff; and consequently, any ambiguity or doubt should be decided in favor of the [customer]."[52]

Construing any ambiguity or doubt against Wide Voice, § 3.6.4 at minimum should be read to incorporate the Step Six and Step Seven step-downs and thereby require Wide Voice to bill the tariffed "Affil PCL" rate elements for terminating traffic that traverses both a Wide Voice tandem and a Wide Voice (or Wide Voice CLEC affiliate) end office. Section 3.6.4, read literally, describes a null set — rendering superfluous the "Affil PCL" rate described in §§ 3.8-3.10 of the tariff.[53] To avoid that result, § 3.6.4 can reasonably be read to require the application of the "Affil PCL" rate elements to calls that travel from a Wide Voice tandem to a Wide Voice or Wide Voice affiliated CLEC end office. The traffic at issue in this Complaint fits that description and therefore should have been billed at the "Affil PCL" rate elements of $0.0007 (beginning July 29, 2017) and $0 (beginning August 2, 2018).[54]

If § 3.6.4 is construed in that way, Wide Voice has violated (and continues to violate) its tariff by billing Verizon "Standard" terminating rate elements.[55] Wide Voice's failure to bill Verizon according to the terms of its tariff is unjust and unreasonable under §§ 201 and 203 and barred by the filed-rate doctrine.[56]

---

against the carrier, and any doubt resolved in favor of the customer."); *Verizon Va., LLC v. XO Commc'ns, LLC*, 144 F. Supp. 3d 850, 858 (E.D. Va. 2015).

[52] *Norfolk & W. Ry. Co. v. B.I. Holser & Co.*, 629 F.2d 486, 488 (7th Cir. 1980).

[53] *See*, *e.g.*, *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 385 (2013) (discussing interpretive rule against surplusage).

[54] Morgan Decl. ¶¶ 4-5.

[55] *YMax Order* ¶¶ 34, 52.

[56] *See*, *e.g.*, *MCI WorldCom Network Servs., Inc. v. PAETEC Commc'ns, Inc.*, 2005 WL 2145499, at *5 (E.D. Va. Aug. 31, 2005) (charges are unreasonable and unlawful if they are

## III. NATIVE AMERICAN TELECOM IS AN "AFFILIATE" OF WIDE VOICE

Some of the traffic at issue in this Formal Complaint traversed a Wide Voice tandem before being routed to an end office that is owned by one of the two Native American Telecom LECs. Defendant Wide Voice and the Native American Telecom LEC entities are "affiliates" within the meaning of 47 U.S.C. § 153(2) and, therefore, within the meaning of § 51.907(g)(2) and (h), for two reasons.

*First*, Wide Voice "indirectly" "owns" — through its holding company WideVoice Communications — more than 10% of Native American Telecom.[57] Specifically, WideVoice Communications owns 24% of both Native American Telecom LECs.[58] Wide Voice and WideVoice Communications have a complete unity of interest: they are comprised of, owned, and controlled by the same individuals.[59] Indeed, according to the former longtime Director of Legal Affairs for both Wide Voice and WideVoice Communications, the two Wide Voice entities are "comprised of the exact same employees" who have "the same duties and responsibilities."[60] Wide Voice and the Native American Telecom LECs are thus affiliates. WideVoice Communications and the Native American Telecom LECs are affiliates via ownership, and Wide Voice and WideVoice Communications are also affiliates via ownership.

*Second*, even putting aside Wide Voice's indirect 24% ownership stake in Native American Telecom, Wide Voice and Native American Telecom are "affiliates" under 47 U.S.C.

---

"not included within [the carrier's] tariffs"); *N. Valley Commc'ns, L.L.C. v. AT&T Corp.*, 245 F. Supp. 3d 1120, 1134 (D.S.D. 2017) ("The filed rate doctrine prohibits a regulated entity from charging any rate other than that filed with the relevant regulatory authority.").

[57] 47 U.S.C. § 153(2).

[58] Formal Compl. ¶¶ 16-17.

[59] *Id.* ¶ 15.

[60] *Id.*

§ 153(2) because they are under "common ownership or control." The same corporate officers who control Wide Voice also control Native American Telecom.[61] When two companies are run by the same corporate officers — as Wide Voice and Native American Telecom have been for years — they are under common control.[62] This conclusion is only strengthened by the fact that Native American Telecom apparently lacks the financial resources to operate as an independent company and has relied on financial support from WideVoice Communications.[63]

To the extent Wide Voice has attempted or attempts in the future to change its corporate structure to avoid complying with the Commission's step-down rates, that is an unjust and unreasonable practice in violation of § 201(b). Wide Voice cannot create "superficial distinction[s]" within its corporate family in order "to increase its fees for interexchange access," because the Commission will not "permit [a carrier] to charge indirectly, through a sham arrangement, rates that it could not charge directly through its existing tariff."[64] The

---

[61] Common corporate officers include or have included: David Erickson (Wide Voice owner / Native American Telecom Director); Jeffrey Holoubek (Wide Voice Director of Legal Affairs / Native American Telecom President); Patrick Chicas (Wide Voice founder and owner / Native American Telecom owner and Director); Andrew Nickerson (Wide Voice CEO / Native American Telecom President); Keith Williams (Wide Voice / Native American Telecom Network Engineer); Carlos Cestero (Wide Voice Controller / Native American Telecom Controller); and Tandy DeCosta (Wide Voice co-founder and owner and Director of Telephony Services / Native American Telecom owner and director for PSTN/TDM Networks and Regulatory Matters). *Id.* ¶¶ 16-17.

[62] *See*, *e.g.*, *Gonzalez v. Old Lisbon Rest. & Bar LLC*, 820 F. Supp. 2d 1365, 1369 (S.D. Fla. 2011) (two companies under common control where they have the same managing member); *Chao v. Barbeque Ventures, LLC*, 2007 WL 5971772, at *5 (D. Neb. Dec. 12, 2007) (two restaurants under "common control" when they were overseen by the same Area Director), *aff'd*, 547 F.3d 938 (8th Cir. 2008).

[63] Formal Compl. ¶ 16 n.30.

[64] Memorandum Opinion and Order, *Total Telecomms. Servs., Inc. v. AT&T Corp.*, 16 FCC Rcd 5726, ¶¶ 17-18 (2001); *id.* ¶ 16 (finding that a LEC and Competitive Access Provider were not independent entities where they "share a high ranking official" and one entity depended on the other for facilities and financing).

Commission should make clear that Wide Voice and others like it cannot evade Step Six and Step Seven through creative corporate restructuring to disguise continued control or ownership interests.

## IV. WIDE VOICE'S TARIFF INCLUDES TWO UNLAWFUL DISPUTE RESOLUTION PROVISIONS THAT ARE VOID *AB INITIO*

Wide Voice's tariff also contains two unlawful dispute resolution provisions, which Wide Voice has raised as procedural barriers to Verizon's disputes.[65] Those tariff provisions purport (1) to unilaterally limit the statute of limitations and (2) to require Verizon to pay disputed charges until after the disputes are resolved. Because the Commission had already held that both such provisions were unlawful by the time Wide Voice added them to its tariff in 2015, those provisions are unlawful and void *ab initio*.

**A.** *First*, § 2.10.4(A) of Wide Voice's tariff — a provision that was added in July 2015 — provides that its bills "shall be binding on the Customer unless written notice of a good faith dispute is received by the Company" and goes on to define "'notice of a good faith dispute' . . . as written notice to the Company's contact *within a reasonable period of time after the invoice has been issued*." (Emphasis added.) That provision's restriction to the raising of disputes to what Wide Voice determines to be a "reasonable period of time after the invoice has been issued" is unlawful and void *ab initio*.

As an initial matter, Wide Voice's tariff does not define what constitutes a "reasonable period of time after the invoice has been issued." For that reason, § 2.10.4(A) violates 47 C.F.R. § 61.2(a), which requires "all tariff[s] . . . [to] contain clear and explicit explanatory statements." A "reasonable period of time" is an inherently amorphous phrase, and Wide Voice's tariff makes

[65] Ex. 2 at VZ_0000041-VZ_0000042.

no attempt to put customers on notice about what it means. Because § 2.10.4(A) of Wide Voice's tariff is "not 'clear and explicit' as required by rule 61.2(a)," it "violates section 201(b) of the Act."[66]

In any event, § 2.10.4(A) is substantively unlawful. In the 2011 *Northern Valley Order*, the Commission held that carriers act unjustly and unreasonably, in violation of § 201, when they unilaterally attempt to shorten the two-year statute of limitations provided in 47 U.S.C. § 415 of the Communications Act. Specifically, the Commission concluded that Northern Valley's 90-day dispute resolution provision "contravenes the two-year statute of limitations in the Communications Act, and, by its terms, purports unilaterally to bar a customer from exercising its statutory right to file a complaint within that limitations period."[67] The D.C. Circuit upheld the Commission's *Northern Valley Order*.[68]

To the extent § 2.10.4(A)'s "reasonable period of time" is less than two years, it purports to make Wide Voice's invoices "binding" before the expiration of the two-year statute of limitations in § 415. Wide Voice's dispute provision is thus materially indistinguishable from the one at issue in *Northern Valley*, because § 2.10.4(A), like the tariff provision at issue in that earlier proceeding, "purports unilaterally to bar a customer from exercising its statutory right to file a complaint within" the two-year limitations period.

---

[66] *Northern Valley Order* ¶ 10; *accord* Memorandum Opinion and Order, *Halprin, Temple, Goodman & Sugrue v. MCI Telecomms. Corp.*, 13 FCC Rcd 22568, ¶¶ 8-13 (1998) (finding that "the Tariff is not clear and explicit as required by section 61.2 of the Commission's rules, which renders the Tariff unreasonable in violation of section 201(b) of the Act").

[67] *Northern Valley Order* ¶ 14 (footnote omitted).

[68] *See N. Valley Commc'ns, LLC v. FCC*, 717 F.3d 1017, 1019-20 (D.C. Cir. 2013) (holding that the Commission "permissibly interpreted the statute to preclude the 90-day provision of the tariff").

Because Wide Voice added § 2.10.4(A) to its tariff in July 2015 — when it was on notice that the provision was unlawful — it never had lawful effect. A tariff "filing that contains [provisions] that the carrier is not permitted to [file] does not even meet the preliminary standard for a legal tariff filing, and therefore cannot become a 'deemed lawful' tariff by operation of Section 204(a)(3)."[69]

**B.** *Second*, Wide Voice tariff § 2.10.4(B) — which also became effective through an amendment in July 2015 — requires that, "[p]rior to or at the time of submitting a good faith dispute, Customer shall tender payment for any . . . disputed charges relating to traffic in which the Customer transmitted an interstate telecommunications to the Company's network." That provision, too, is unlawful and void *ab initio*.

Here again, the Commission's *Northern Valley Order* held in 2011 that carriers act unjustly and unreasonably, in violation of § 201, when they file tariff provisions that purport to require carriers to pay amounts billed in order to raise disputes.[70] As the Commission explained, a "[t]ariff provision that requires all disputed charges to be paid 'in full prior to or at the time of submitting a good faith dispute' is unreasonable," because such a provision "requires everyone to whom [the CLEC] sends an access bill to pay that bill, no matter what the circumstances (including, for example, if no services were provided at all), in order to dispute a charge."[71] Wide Voice tariff § 2.10.4(B) is no different from the provision the Commission invalidated in

[69] *Aureon Recon. Order* ¶ 15.

[70] *Northern Valley Order* ¶ 14.

[71] *Id*.

the *Northern Valley Order*, because it, too, requires customers to pay disputed charges no matter the circumstances, and is therefore unlawful and void *ab initio*.[72]

## CONCLUSION

The Commission should find that Wide Voice has violated 47 U.S.C. § 201 and declare illegal, unlawful, and void *ab initio* §§ 2.10.4(A), 2.10.4(B), and 3.6.4 of Wide Voice's FCC Tariff No. 3. The Commission should accordingly enter a declaratory ruling in Verizon's favor and award monetary damages to Verizon for amounts that Wide Voice unlawfully billed and collected.

[72] The "relating to" clause does not save § 2.10.4(B) because, to the extent that clause has a discernable meaning, "traffic in which the Customer transmitted an interstate telecommunications to the Company's network" encompasses all of the terminating switched access traffic a customer delivers to Wide Voice that could be subject to its federal tariff (*i.e.*, interstate switched access traffic). The *Northern Valley Order* was not limited to originating switched access charges.

Respectfully submitted,

/s/ *Curtis L. Groves*

Curtis L. Groves
VERIZON
1300 I Street, N.W., Suite 500 East
Washington, D.C. 20005
(202) 515-2179

Scott H. Angstreich
Joshua Hafenbrack
Sean M. Nadel
KELLOGG, HANSEN, TODD, FIGEL
& FREDERICK, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

*Counsel for MCI Communications Services, Inc.*

June 14, 2019

**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**

| | |
|---|---|
| **In the Matter of**<br><br>**MCI COMMUNICATIONS SERVICES, INC.,**<br><br>***Complainant*,**<br><br>**v.**<br><br>**WIDE VOICE, LLC,**<br><br>***Defendant.*** | **Proceeding Number 19-121**<br>**Bureau ID Number**<br>**EB-19-MD-003** |

## DECLARATION OF TRACI MORGAN

I, Traci Morgan, hereby declare as follows:

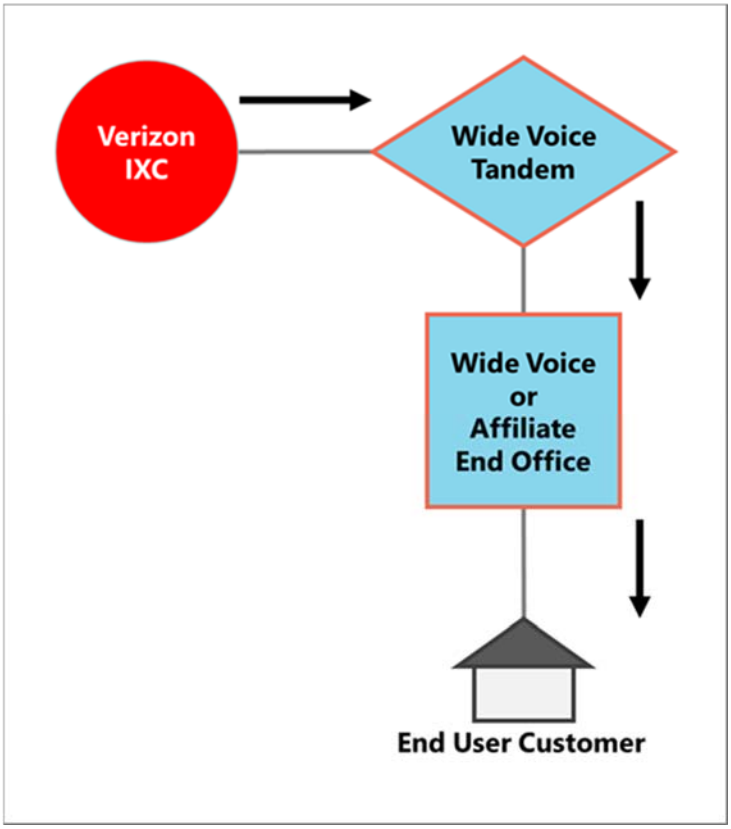
1. I am employed by Verizon. My job title is Senior Manager-Billing Solutions, and my responsibilities include reviewing and auditing invoices from local exchange carriers for intercarrier compensation charges, processing such invoices for payment, and disputing intercarrier compensation charges that have been inappropriately billed to Verizon. I am providing this Declaration in support of Verizon's Formal Complaint against Wide Voice, LLC.

2. In November 2018, Verizon conducted an internal audit of Wide Voice's intercarrier compensation charges based on suspicious billing patterns.

3. During that audit process, Verizon determined that Wide Voice was improperly billing Verizon at the "Standard" Tandem-Switched Transport rate elements for terminating traffic that was routed through a Wide Voice tandem to a Wide Voice end office.

4. Beginning with Wide Voice's December 2018 invoice, Verizon began disputing and withholding payment with respect to Wide Voice's terminating charges, where Wide Voice billed its "Standard" terminating rate elements for traffic that routed through a Wide Voice tandem to a Wide Voice (or Wide Voice affiliated) end office.

5. According to the Local Exchange Routing Guide (LERG), the call path for the Wide Voice terminating traffic for which Verizon is disputing and withholding payment is as follows:




6. It is Verizon's understanding that there are no price cap carriers affiliated with Wide Voice.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: June 12, 2019

Traci Morgan